



# The Best Possible Employment & Support Allowance

claims on  
**Physical Health Grounds**

A guide to the Work Capability Assessment

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## Introduction - why this guide is so big

Dear Reader,

The first thing you’re likely to notice about this guide is its sheer size.

We realise that when you’re already having to cope with a serious health condition or disability, discovering you need a publication of this size just to make a claim for a single benefit isn’t good news

Unfortunately, Employment and Support Allowance (ESA) includes the worst and most complex assessment procedure for a benefit that we have ever encountered. Which means our guide has to help you make sense of things that take a great deal of explaining.

At the heart of the assessment procedure is something called the **work capability assessment**, which includes two medical tests.

These tests were designed by dubiously constituted committees, tried out on a statistically insignificant number of claimants, reworked to make them harder to pass and then hastily written up into almost incomprehensible legislation.

In 2011 the test was revised to make it shorter and even harder to pass, if no simpler to understand.

The questionnaire you have to fill in is misleading and, at times, different from the actual legal tests. The guidance given to doctors carrying out the medicals is, in our view, at some points equally questionable.

So this guide is designed to allow you to make an effective claim in spite of the system set up by the DWP.

Our method is a slow, repetitive and painstaking one with quite a few uncertainties along the way. And we do not in any way guarantee that using this guide will mean that you will be awarded ESA. That will depend on your health issues and how they affect you.

But we can say with certainty that if you follow the information in this guide you will provide the most accurate possible evidence about your entitlement to ESA. And you will avoid all of the deliberate, or merely incompetent, pitfalls we have identified which will undoubtedly lead to many thousands of less well informed claimants missing out on a benefit they are entitled to.

Good luck!

Steve Donnison and Holiday Whitehead (barrister)

## **Who is this guide for?**

This guide is for you if you are applying for employment and support allowance (ESA) because you have a physical health condition, such as:

- epilepsy
- arthritis
- heart disease
- back problems

It covers the new work capability assessment which came into force on 28 March 2011.

## ***What this guide is for***

This guide will help you to:

- complete the ESA50 questionnaire
- provide supporting evidence
- prepare for and attend a medical

## ***How to use this guide***

Use it slowly, bit-by-bit.

This is a step-by-step guide to a highly complex process. It will help you to make a very detailed and well supported claim and considerably improve your chances of success. But it's also very long and we often have to say the same thing in several different places, so please don't try to read it all at once. Use it like you would any other instruction manual – a car maintenance manual, say - just read the bit you need at the time and don't worry about the rest.

## How to start your claim for ESA

To claim ESA you will generally need a fit note – formerly a sick note.

Assuming you have one of these the next step will be to make an initial application by phone:

Telephone 0800 055 6688  
Text phone 0800 023 4888

Alternatively, you can download a paper claim form or claim online from the DirectGov website at:

[http://www.direct.gov.uk/en/DisabledPeople/FinancialSupport/esa/DG\\_172014](http://www.direct.gov.uk/en/DisabledPeople/FinancialSupport/esa/DG_172014)

(Google ‘claiming ESA’ and the DirectGov link should be first, or very nearly first, in the list)

If you make your initial claim by telephone you will be sent a printed Customer Statement to check, sign and return. This is a record of the information you gave over the telephone and it's very important that you make sure it was taken down correctly.

Whichever method you use, you may be asked to provide other evidence, such as proof of savings and income as well as a fit note.

There's more information about age limits, other benefits, capital limits, national insurance contributions and other issues which may affect your claim in our guide to Understanding ESA. But the most important thing is to make a claim if you think you may be eligible, the DWP will deal with all these additional issues during the claims process.

Once your initial claim is accepted you will be placed in the ‘assessment phase’ of ESA. There's more about this in the next section.

## ***Moving from assessment to main phase ESA***

ESA is divided into an assessment phase in which your eligibility for ESA, and the group you will be placed in, is decided. For successful applicants, this is followed by the main phase. Unsuccessful applicants can appeal or apply for jobseeker's allowance, or do both.

### ***Assessment phase***

The assessment phase is intended to last for 13 weeks, from when you first make a claim for ESA to when a decision is made about your entitlement. In reality it often lasts for many months more than this.

The test to decide whether you are eligible for ESA and, if so, at what rate is called the Work Capability Assessment (WCA).

### ***About the work capability assessment***

The **work capability assessment** is the collective name for two medical tests which are used to decide which, if either, component of ESA you may be entitled to. The tests are carried out by a private company called Atos on behalf of the DWP. The person carrying out the test will be a 'health professional', usually either a doctor or a nurse.

The **limited capability for work assessment** is the first medical test – if you pass this points-based test you will be eligible to join the work-related activity group within ESA. Most people who get ESA are in this group. You will receive a basic allowance, plus a work-related activity component. You will also have to attend six compulsory work-focused (pathways to work) interviews.

The **limited capability for work-related activity assessment** is the second test – if you pass this confusingly similarly named test as well you will be eligible to join the support group within ESA. You will receive a basic allowance plus a support component which is paid at a slightly higher rate than the work-related activity component. You won't have to have any compulsory work-focused (pathways to work) interviews.

In theory, everyone has to pass the limited capability for work assessment first – if you fail you have to claim jobseekers allowance – and then a decision is made about whether you pass the second, harder, limited capability for work-related activity assessment for the support group.

In practice, the DWP try to pick out all the most severely disabled people who are eligible for the support group as early as possible, based on medical certificates from their doctor. This is done before you are even sent a questionnaire to complete.

### ***Support group early entry***

If they can't make a decision on the support group just from your fit note, Atos health professionals may contact your doctor for more information before recommending to the decision maker that you should be in the support group. This will usually be done by sending your GP an ESA113 form or a Factual Report form which asks specific questions about how your condition affects you.

If the Atos health professional assesses you as eligible for the support group they must also say on what grounds you pass the limited capability for work assessment, so that they can show that you passed both medical tests

### ***ESA50 questionnaire***

If you are not placed in the support group at this stage, you will be sent an ESA50 questionnaire to complete. Most of this guide is about completing that questionnaire.

Once your completed questionnaire is returned you may be placed in the support group or the work-related activity group. But in most cases you will be asked to attend a medical before a decision is made about which group, if either, you should go into.

At the medical the Atos health professional will assess what points they think you should score and create a medical report about you using LiMA computer software. This will be passed to the decision maker.

### ***Work-focused health-related assessment***

This was a second assessment to help decide what steps would be needed to help you move back into work. However, work-focused health-related assessments have been suspended for two years from 19 July 2010 due to their having achieved only 'mixed results' and because of the increasing backlog of ESA medicals.

### ***The decision***

The decision maker will decide – supposedly based on all the evidence whether:

- 1 You have failed the work capability assessment and will have to claim jobseeker's allowance.
- 2 You have passed the limited capability for work assessment and are eligible to join the main phase of ESA in the work-related activity group. You will get an additional work-related activity component.
- 3 You have passed both the limited capability for work assessment and the limited capability for work-related activity assessment and are eligible to join the higher paying support group. You will get an additional support component.

If you are not happy with the decision you can appeal.

### ***Work-focused (pathways to work) interviews***

Unless you get early acceptance into the support group you will have a compulsory work-focused interview at your local Jobcentre Plus at around week eight of your claim. These are also known as pathways to work interviews. At this interview you have to draw up an action plan for moving into work and also discuss any problems you may have with working.

If you are put into the work-related activity group in the main phase of ESA you will have a further five work-focused interviews either at Jobcentre plus or with a private or voluntary sector organisation, depending on which area of the country you live in. Again, because of backlogs in the system, many people have some or all of their interviews before a decision has been made about which ESA group – if any – they will be placed in.

If you go into the support group you do not have to attend work-focused interviews.

You can download a detailed guide to Work-focused (pathways to work) interviews from [www.benefitsandwork.co.uk](http://www.benefitsandwork.co.uk)

## **Three ways to get into the work-related activity group**

As we've already explained, the limited capability for work assessment is a points based system for assessing your ability to carry out various activities. If you score enough points under this assessment you will be eligible to join the work-related activity group (WRAG). The assessment is made up of a physical health test and a ‘mental, cognitive and intellectual function’ test.

Claimants who are placed in the support group have to pass this assessment and then a further one, the limited capability for work-related activity assessment.

The majority of people who get into the work-related activity group (WRAG) do so by scoring 15 points or more in the assessment. But there are actually three ways of passing this test and two do not involve points.

### ***The three ways***

1. You can be exempt from the assessment and therefore not need to show that you score enough points.
2. You can score 15 or more points in the assessment.
3. You can fail to score enough points but be covered by the exceptional circumstances regulations.

We deal with all three methods of passing the limited capability for work test in detail in this guide.

## 1 Should you be in the work-related activity group on exemption grounds?

There are a number of grounds on which claimants can be exempted from the limited capability for work assessment and placed in the support group.

If you are exempt you do not have to complete an ESA50 questionnaire or attend a medical. You automatically pass limited capability for work assessment and you may also pass the limited capability for work-related activity assessment - the support group test - as well.

### ***Exemptions***

You will be treated as having limited capability for work if any of the following circumstances apply:

- (a) you are terminally ill, i.e. you are suffering from a progressive disease and your death in consequence of that disease can reasonably be expected within 6 months.

This will also give you exemption from the limited capability for work-related activity assessment, allowing you to join the support group. This issue should be picked up by Atos before you receive an ESA50 form and they will usually check to see if a DS1500 has been submitted, the form used in connection with claiming disability living allowance under the special rules. You should not have to complete an ESA50 and you should go straight into the support group without needing to spend 13 weeks in the assessment phase.

- (b) You are receiving, or recovering from receiving, intravenous, intraperitoneal or intrathecal chemotherapy or you are likely to receive such treatment in the next six months and the Secretary of State is satisfied that you should be treated as having limited capability for work.

This should also give you exemption from the limited capability for work-related activity assessment, allowing you to join the support group. There is a space on page 5 of the form to give details of chemotherapy, but you will need to make it clear the type of chemotherapy you are receiving, or are going to receive, and when it is expected to happen

- (c) you have, or have been in contact with, a notifiable disease;

According to the WCA Handbook:

'This category involves those who have been excluded from work through a Public Health Order. There are a number of Public Health Acts and a number of conditions covered in legislation. Infectious Diseases such as typhoid, salmonella and hepatitis may be covered.'

'However this does not mean that anyone carrying these diseases is considered to have limited capability for work. The condition of treating them as having limited capability for work only applies if there is evidence of a Public Health Order having been placed on the individual.'

- (d) you are pregnant and there is a serious risk of damage to your health or to the health of your unborn child if you do not refrain from work

This should also give you exemption from the limited capability for work-related activity assessment, allowing you to join the support group. There is a tick box on page 5 of the ESA50 questionnaire which asks if you are pregnant. But it does not give any space to say if there may be a danger to your or your unborn child. You may wish to include details in the 'Other information' section of the form and you should also consider contacting the office dealing with your claim and informing them separately.

(e) you are pregnant and within the maternity allowance period and entitled to maternity allowance

(f) you are pregnant and within either six weeks of giving birth or have given birth in the last two weeks and you are not entitled to maternity allowance or statutory maternity pay.

If you think that any of these exemptions may apply to you, inform the DWP office dealing with your claim and give them details of your GP or other health professional who can provide supporting evidence.

### ***Hospital treatment***

You will be treated as having limited capability for work on any days in which you are an in-patient in hospital or recovering from in-patient treatment. The same applies if you are attending residential rehabilitation for the treatment of drug or alcohol addiction. This does not need to be medical treatment. It could, for example, be a residential centre run by a religious organisation.

The same applies to any week in which you are receiving, or recovering from receiving, certain regular treatments such as:

- haemodialysis;
- radiotherapy; or
- total parenteral nutrition.

There is a space on page 5 of the ESA50 form to give details of hospital treatment and on page 6 to give details of residential rehabilitation.

## 2 Should you score enough points to get into the work-related activity group?

The limited capability for work assessment is divided into 17 activities: 10 physical and 7 which assess mental health and learning difficulties. We only deal with the physical activities in this guide, there's a separate guide for mental health and learning difficulties.

Each of these activities is divided into a number of ‘descriptors’ and each of these descriptors has points attached to it, ranging from 15 down to zero.

You need to score a total of 15 points in order to pass the limited capability for work assessment. If you have a mental health problem or learning difficulty as well you can add together your physical and mental health points and, if the combined total adds up to 15, you will have passed.

You can only score points for one descriptor from each activity – the highest one.

So, for example, if 1(c) applies you get 9 points, but you can't also have 6 points for 1(d) because they are both the same activity. But you can have 9 points for 3(b), if that applies, because that's a separate activity. In this case you would have 18 points and, provided the decision maker agreed with this assessment, you would be eligible to join the work-related activity group.

You'll find much more detail about points and how to give evidence about what you consider you should score as we work our way through completing the form further on in this guide.

### 3 Should you be in the work-related activity group because of exceptional circumstances?

Even if you fail to score enough points under the limited capability for work assessment, you will still be found incapable of work and eligible for the work-related activity group if you are covered by the 'exceptional circumstances' regulations.

There are two exceptional circumstances regulations. A check should be made to decide if either of them apply to you at your medical, after the points system has been applied.

#### ***Life threatening disease***

The first regulation says that you will be found to have limited capability for work if :

a) *you are suffering from a severe life threatening disease in relation to which:*

- (i) *there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and*
- (ii) *in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure.*

So, for example, you may have severe inflammatory bowel disease, such as Crohn's disease, which is not currently being controlled by medication or you may have stopped taking medication because of very severe side effects.

It's important to be aware though, that refusing to take medication or have treatment may mean that the decision maker concludes that there is not a 'reasonable cause' for the condition not to be controlled. In this case you would need to show that your refusal to take medication is reasonable.

If you think that this regulation applies to you it would be worth including information about why you think so in an additional sheet and attaching it to your ESA50 questionnaire. If you think you can get medical evidence to support what you are saying attach a copy to your questionnaire.

#### ***Substantial risk***

The second regulation says that you will be found to have limited capability for work if:

(b) *you suffer from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if you were found not to have limited capability for work.*

For this exceptional circumstance regulation to apply you need to show firstly that you have a specific 'disease or disablement'. This could be, for example, a heart or chest condition.

Then you need to show that there would be a 'substantial risk' either to you or to someone else if you were found not to have limited capability for work.

So, if you were found not to have limited capability for work, you would have to sign on for Jobseeker's Allowance – or not get an income replacement benefit at all. You would need to meet your jobseeker's agreement and eventually start doing paid work.

How might this pose a 'substantial risk'?

For example, might the exertion involved in travelling to interviews or going to work five days a week lead to a serious deterioration in your health condition? Might the exertion even be fatal?

If you believe that this exceptional circumstance applies to you, include information with your questionnaire and try to obtain supporting medical evidence.

It is likely that if this exceptional circumstance applies to you that you will also be covered by a similar regulation which will allow you to be placed in the support group.

## **Three ways to get into the support group**

If you pass the limited capability for work assessment you will then have another test, the limited capability for work-related activity assessment. If you pass this test as well you will be placed in the support group. Both tests are carried out on the same occasion if you have an Atos medical – you won’t even be aware that the second one is taking place.

Like the first test, there are three ways of passing this second assessment:

1. You can be exempt from the assessment. The grounds for exemption are the same, or very similar, to three of the exemption grounds from the first test.
2. You can be covered by one of the descriptors. These are mostly the highest scoring descriptors from the activities in the first test, but there are some differences.
3. You can fail to be covered by any of the descriptors but still be covered by the exceptional circumstances regulations. There is only one of these and it is virtually the same as one of the exceptional circumstances from the first test.

We deal with all three methods of passing the limited capability for work-related activity test in detail in this guide.

## 1 Should you be in the support group on exemption grounds?

If you pass the limited capability for work assessment you will go on to be assessed under the limited capability for work-related activity assessment.

Once again, the first question is whether you are exempt from assessment.

The following claimants are treated as having limited capability for work-related activity and will be assigned to the support group:

- (a) you are terminally ill, i.e. you are suffering from a progressive disease and your death in consequence of that disease can reasonably be expected within 6 months;
- (b) You are receiving, or recovering from receiving, intravenous, intraperitoneal or intrathecal chemotherapy or you are likely to receive such treatment in the next six months and the Secretary of State is satisfied that the you should be treated as having limited capability for work-related activity;
- (c) you are pregnant and there is a serious risk of damage to your health or to the health of your unborn child if you do not refrain from work-related activity.

As you can see, (a) is exactly the same as the exemption for the work-related activity group and allows you to be placed in the support group.

(b) and (c) are almost identical to the exemptions for the work-related activity group except that now you need to show that you would have to refrain from ‘work-related activity’ rather than actual work. This could include things such as interviews and training. In practice, if you are found to be exempt in the first test you are very likely to be found exempt for the purposes of this test too and placed in the support group.

## 2 Should you be in the support group because a descriptor applies to you?

If you are not exempt from the limited capability for work-related activity assessment, the next question is whether any of the descriptors in the assessment apply to you.

If any one of the descriptors below applies for the majority of the time or for the majority of the times that you attempt it, then you will be eligible for the support group. Any aid, appliance or prosthesis that you normally use will be taken into account when assessing you.

Almost all of these descriptors are 15 point descriptors from the assessment for the work-related activity group, so we deal with them in great detail as we go through filling in the ESA50 form with you. (Though please note that not every 15 point descriptor will get you into the support group, we explain which do and which don't as we take you through the form).

The only exceptions are:

### **8. Absence or loss of control over extensive evacuation of the bowel and/or bladder.**

The support group descriptor requires you to lose control at least once a week, whereas the 15 point descriptor only requires once a month. In every other respect it is identical.

### **15. Conveying food or drink to the mouth.**

### **16. Chewing or swallowing food or drink.**

Neither of these activities appear in the assessment for the work-related activity group at all, so we give more information about them below. Because they have no equivalent in the work-related activity group test, the regulations say that if any of them apply then you will have passed the first test on the same grounds – not something you need to spend any time trying to make sense of.

### **Support group descriptors**

Limited capability for work-related activity test.

*[Descriptors 1-8 relate to physical conditions]*

#### **1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.**

Cannot either:

- (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion  
or
- (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.

#### **2. Transferring from one seated position to another.**

Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.

#### **3. Reaching.**

Cannot raise either arm as if to put something in the top pocket of a coat or jacket.

#### **4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).**

Cannot pick up and move a 0.5 litre carton full of liquid.

**5. Manual dexterity.**

Cannot either:

- (a) press a button, such as a telephone keypad or;
- (b) turn the pages of a book with either hand.

**6. Making self understood through speaking, writing, typing, or other means normally used.**

Cannot convey a simple message, such as the presence of a hazard.

**7. Understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used.**

Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.

**8. Absence or loss of control over extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting) despite the presence of any aids or adaptations normally used.**

At least once a week experiences

- (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or
- (ii) substantial leakage of the contents of a collecting device; sufficient to require cleaning and a change in clothing.

[Descriptors 9-14 relate to mental health and learning difficulties]

**9. Learning tasks.**

Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.

**10. Awareness of everyday hazards (such as boiling water or sharp objects).**

Reduced awareness of everyday hazards leads to a significant risk of:

- (i) injury to self or others; or
- (ii) damage to property or possessions, such that they require supervision for the majority of the time to maintain safety.

**11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).**

Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.

**12. Coping with change**

Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.

**13. Coping with social engagement due to cognitive impairment or mental disorder**

Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.

**14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder**

Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.

*[These final two activities have both physical health descriptors and mental health/learning difficulties descriptors.]*

**15. Conveying food or drink to the mouth.**

- (a) Cannot convey food or drink to the claimant’s own mouth without receiving physical assistance from someone else;
- (b) Cannot convey food or drink to the claimant’s own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) Cannot convey food or drink to the claimant’s own mouth without receiving regular prompting given by someone else in the claimant’s physical presence; or
- (d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant’s own mouth without receiving —
  - (i) physical assistance from someone else; or
  - (ii) regular prompting given by someone else in the claimant’s presence.

**16. Chewing or swallowing food or drink**

- (a) Cannot chew or swallow food or drink;
- (b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant’s presence; or
- (d) Owing to a severe disorder of mood or behaviour, fails to—
  - (i) chew or swallow food or drink; or
  - (ii) chew or swallow food or drink without regular prompting given by another person in the physical presence of the claimant.

Problems with activities 15 and 16 would need to be due to severe impairments.

The WCA Handbook suggest problems could be due to conditions like:  
motor neurone disease or a stroke limiting upper limb movement;  
surgery for head and neck cancer;  
disorders of the gastro-intestinal tract.

Severe lung conditions might also be relevant..

In relation to prompting and mood or behaviour, learning difficulties and conditions like anorexia may apply but there would need to be evidence of their severity.

### **3 Should you be in the support group because of exceptional circumstances?**

Finally, some people who are not exempt and to whom none of the limited capability for work related-activity descriptors apply are still eligible for the support group. This is because the exceptional circumstances rule applies to them.

You will be treated as having limited capability for work-related activities if:

*you suffer from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if you were found not to have limited capability for work-related activity.*

This is almost identical to one of the exceptional circumstances for the work-related activity group except that now you need to show that you would have to refrain from ‘work-related activity’ rather than actual work. This could include things such as interviews and training. In practice, if you are found to be covered by this exceptional circumstance in the first test you are very likely to be covered for the purposes of this test too and placed in the support group.

## Completing the ESA50 questionnaire

When you become subject to the limited capability for work-related activity assessment you will receive a letter from the DWP asking you to complete and return an enclosed questionnaire.

You must complete the questionnaire and return it within the time limit or you may be found capable of work, unless you can show that you had good cause for failing to do so.

You can also download an electronic copy of the ESA50 questionnaire from the DWP website by following this link:

[http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/IllorInjured/DG\\_172012](http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/IllorInjured/DG_172012)

or by typing ‘download ESA50’ into Google. The electronic ESA50 allows you to enter and save information on it, but please make sure it works correctly on your computer before relying on it. Also try to save a copy of the information elsewhere in case anything goes wrong with your electronic form. Once you have completed the electronic form you can print it off and post it as you would an ordinary paper copy.

### ***Returning the questionnaire***

You will have four weeks to complete and return the questionnaire. (The time limit was reduced from six weeks to four weeks for forms sent out from 31 October 2011). A reminder will be sent three weeks after the questionnaire was sent out. If it is not returned one week after the date of that reminder you will be treated as not having limited capability for work unless you have good cause for not returning the questionnaire. Matters to be taken into account when deciding if you had good cause for not completing and returning the questionnaire include:

- (a) whether you were outside Great Britain at the relevant time;
- (b) your state of health at the relevant time; and
- (c) the nature of any disability you have.

### ***Missed deadline***

If you’ve missed the deadline, return the form as quickly as possible along with a letter explaining why you are late doing so. If the decision maker decides you have ‘good cause’ for sending your form in late they can still accept it, otherwise you will be treated as capable of work. Obviously this is a serious matter, so if you’ve been ill, away from home or have some other reason why you are late, explain in as much detail as possible.

If the decision maker refuses to accept your late claim, get advice from one of the agencies listed at the end of this guide as quickly as possible as you may be able to appeal this decision as well as making a fresh claim.

### ***Use additional sheets***

Some of the boxes on the questionnaire are very small. It’s definitely worth using additional sheets if you can’t fit everything you want to say in the boxes. Make sure you include your name and national insurance number on the top of every additional sheet you use and, if possible, staple them to the back of the questionnaire.

## **Keep a copy**

We strongly advise that, if at all possible, you keep a copy of your completed questionnaire and any additional sheets. It's far from unknown for Atos and the DWP to lose documents sent to them. It will also be useful for you to be able to review your evidence before you have a medical, if you are called for one.

In addition, you are likely to receive another ESA50 questionnaire to complete at least once a year and possibly even more frequently, so it's worth keeping a copy for reference. Though clearly you must ensure that the information you give on each new form is accurate and up-to-date.

## How to show you score points even if you can actually do an activity

It's very important that, before you complete your questionnaire, you understand that just because you can carry out an activity that doesn't mean you are prevented from scoring points for being unable to do it.

This is because if you can perform an activity, but it causes you problems such as:

- severe discomfort,
- pain,
- breathlessness;
- extreme fatigue;

or if you could do it once but couldn't repeat it within a 'reasonable' space of time or with reasonable regularity or safely then that may count as being unable to do it.

So, for example, you may be able to walk or wheel your wheelchair 100 metres but you are actually in severe discomfort after only 50 metres, then you should argue that 50 metres is the limit of your ability.

Or perhaps you can stand for 10 minutes without help from another person. But because of your ME/CFS you would be so exhausted at the end of that period that you would have to go and lay down for hours and might not be able to stand again for any length of time for hours. In that case you should argue that you are not able to stand for 10 minutes because you cannot do it with reasonable repeatability.

Or it may be that you have severe emphysema and you could walk up two steps but you would be left extremely breathless by doing so. Again, you should argue that you are not able to walk up two steps because of the effect it has on your breathing.

Or your condition may be a variable one, meaning that on some days you can do an activity and on other days you cannot. In this case you should be assessed on how you are for the majority of the time. Try to explain on your form the ways in which your condition varies and give your best estimate of how many days a week you are unable to manage the descriptor in question. We do know how difficult this is likely to be, but better that you do it than leaving it entirely to the Atos health professional.

If you have indicated on your ESA50 form that your condition is variable and this issue is not addressed by the health professional if you have a medical, that will be grounds for challenging the reliability of the report if you need to appeal.

Of course, all these issues are very subjective and some are impossible to measure: what is severe discomfort and how can you tell if someone is experiencing it, for example? All you can do is give as much information as possible in your questionnaire and, if you are not found to have limited capability for work, consider appealing.

But while you are filling out the questionnaire, please try to keep these issues in mind.

## Aids and appliances

According to guidance issued to decision makers, any aids or appliances you use, or could reasonably be expected to use, should be taken into account when you are assessed. This could be things like a walking stick, spectacles, a wheelchair or a hearing aid.

So, if you normally use an aid or appliance you will be assessed as if you were using it. For example, if you can only walk 40 metres before stopping when not using a stick, but can walk 200 metres before stopping when using a stick, then it is the longer distance that will be taken into account.

If you have been prescribed an aid or appliance, or it has been recommended that you use one, then you will be assessed as if you were using it – even if you don’t normally do so.

Even if an aid or appliance hasn’t been prescribed or recommended, if other people with the same difficulties as you would normally use one, then you will be assessed as if you use the aid or appliance, unless it would be unreasonable to do so.

When the decision maker is deciding if it would be reasonable for you to use an aid or appliance, there are a range of issues they should take into account. For example:

- Is it likely that your health professional would advise you to use the aid or appliance, if you asked them about it?
- Do you actually possess the aid or appliance? If not, is it widely available? And could you afford it, if it is not available on prescription?
- If it is a bulky item, like a wheelchair, do you have room to store it?
- Is your health condition likely to be a short one, meaning that it would be unreasonable to expect you to get the aid or appliance?
- Have you been given medical advice that means you shouldn’t use an aid or appliance. For example, have you been told that you should walk as much as possible, even though it is slow and painful to do so, rather than use a wheelchair? This might be because it is important that you maintain or improve the muscle tone in your legs.
- Would you be able to use the aid or appliance if you had one? For example, does poor grip strength mean that you couldn’t use a walking stick? Or do you have breathing difficulties which mean you would be at risk from the exertion required to manually propel a wheelchair?
- Do you have a mental health condition that means you would be unable to use the aid or appliance.

If you have not been prescribed the aid or appliance and you do not normally use it, the decision maker should explain how the it will help you carry out the activity, not simply assume that it is obvious. The aid or appliance should also not be one that substitutes for the physical activity being assessed, such as a grabber in place of using your hands in the manual dexterity activity. But the use of prosthetic hands can be taken into account.

When you are completing the ESA50 questionnaire, if there is an aid or appliance which someone with your condition would normally use but you are unable to, then consider explaining why in the ‘Use this space’ box.

## How to complete pages 1-6

### **About you**

This is probably the most straightforward part of the form. But don't delay returning the form if, for example, you don't know your national insurance number. You can always make enquiries and send that in later if necessary.

### **Face-to-face assessment**

These were previously called medical assessments on the form. But it seems they no longer want to raise expectations by implying that the WCA resembles a proper medical as we know it.

Atos call centre does not seem to have a high reputation for politeness and good customer service amongst some claimants. If you have a mental health condition as well as a physical one and you would find it difficult to speak to someone on the phone to arrange an appointment, then consider not giving a phone number and instead explaining in the box that, because of your mental health condition you need them to write to you rather than phone.

Be prepared though: if they already have your phone number they may just ring you anyway or they may send you a letter asking you to phone them within 48 hours.

In some circumstances phoning you when you have asked not to be telephoned may be a breach of the Equality Act (formerly the Disability Discrimination Act).

### **If you do not understand English, or cannot talk easily in English, do you need an interpreter?**

If you do not understand English, or cannot talk easily in English, do you need an interpreter. This may apply if English is not your first language. If you need a signer, see the box below.

### **Tell us about any help you would need if you have to go for a face-to-face assessment.**

The form lists problems with stairs, travelling, including using public transport or if you need a British Sign Language signer.

**Beware!** Some Atos medical centres are not accessible to wheelchair users or even to people who have problems with stairs. Make sure you give full details of your access requirements here.

You may wish to tell them about any problems you would have with waiting in a public area amongst strangers or if you need access to a lavatory at all times because of continence issues. You can ask for a home visit, but they are very reluctant to provide these and you will need medical support to show your need for a home visit.

According to the FAQ's on the Atos website, you can also be granted a home medical if your local examination centres are not accessible:

"If an assessment centre is not on the ground floor and you cannot use the stairs in the event of an emergency, we will look at an alternative venue or a home visit for you."

[http://www.atoshealthcare.com/index.php?option=com\\_content&task=view&id=68&Itemid=428](http://www.atoshealthcare.com/index.php?option=com_content&task=view&id=68&Itemid=428)

If you are unable to use stairs safely in an emergency, make sure you check whether the centre you are being sent to is on the ground floor as soon as you receive your appointment. If it isn't, contact Atos and ask them to make alternative arrangements.

If you wish to have your medical recorded, it may be worth saying so here, though you may also need to do so again when you receive your appointment for a medical.

***Tell us about any times or dates in the next 3 months when you cannot go to a face-to-face assessment.***

If you are bringing someone with you to the medical, make sure you give their unavailable dates as well. If there are times of the day when it would be particularly hard for you to attend, give information about this too.

***About your illnesses or disabilities.***

This is your opportunity to give the clearest picture of how your condition affects you, not in terms of the activities and descriptors in the rest of the form, but in terms of what your life is like.

You might want to leave this box until you have done the rest of the form, so that you can include anything here that hasn't been covered elsewhere – but don't forget to come back and do it.

You need to say:

- What conditions you have and, if you know, when they began.
- Dates of events such as heart attacks, strokes or accidents..
- How your life is limited by your condition. You might be able to write about the things you used to do that you are no longer able to do, for example, the help you get from other people, what the future is likely to hold for you.
- Anything else that might make the decision maker understand just how much your life is affected by your illness or disability.

***Details of tablets, medication or special treatment***

This box asks you to list any medication or treatment you are having.

Give the name and the amount of any medication you take and how often, if possible. If you experience any side effects from your medication you should list them in this box.

You may be able to get a printout of your medication from your GP.

If you have had treatment in the past which demonstrates the severity of your condition it may be worth listing here even if it was some time ago. Likewise, it may be worth giving details of any planned future treatment.

***About your GP***

This section asks for details of your GP. If they have little involvement in your health care it is worth making a note on the form saying so. Bear in mind that the DWP may well contact your GP even if you say you seldom see them. So, seriously consider making an appointment with your GP and updating them on your condition because inaccurate and unhelpful information from your GP can seriously damage your claim.

***Does anyone else provide you with care, support or treatment ?***

This space is for details of people other than your GP who offer you professional support. It could be a health professional, such as an occupational therapist, specialist nurse or consultant, or it could be someone like a social worker, housing support worker or similar.

If there is more than one person, give details of others on page 18 or on an additional sheet. It is important that you do this as the decision maker should ensure that they have sufficient evidence to make a decision on, rather than solely relying on an Atos medical report. So, if you ask them to contact specific health professionals and they fail to do so, this may be an issue you will want to raise if your claim is not successful and you lodge an appeal.

Because there is no guarantee that the DWP will contact your health professionals you may need to approach them yourself and ask them if they are willing to provide evidence. See ‘*Supporting evidence means more chance of success*’ later in this guide for more on the importance of supporting medical evidence.

### ***Hospital or clinic treatment***

Give details here of any hospital based in or out-patient treatment you receive or are expecting to receive – and see the information overleaf if you are in rehabilitation for drug or alcohol issues.

The DWP may contact your consultant, but there is no guarantee they will do so. So if you think it is important that this person provides evidence to support your claim you may need to approach them yourself and ask them if they are willing to provide you with it.

### ***Warning – chemotherapy!***

The form asks you to list any in-patient treatment in the past three or next three months. But if you are receiving, or are likely to receive in the next six months, certain sorts of chemotherapy then you will be exempt from the work capability assessment and should be placed in the support group.

If this applies to you then make sure you give details on this page. You may also wish to try to contact the office dealing with your claim and inform them before returning this form.

For more details, see the sections on exemptions for each of the two tests.

### ***Are you pregnant?***

If you are close to your due date, you may be exempt from the limited capability for work assessment. See the section on ‘Should you be in the work-related activity group on exemption grounds?’

If there may be a danger to you or your unborn child if you are not placed in the support group, make sure you give details here or in the ‘Other information’ section on page 18. You may also wish to try to contact the office dealing with your claim and inform them before returning this form.

### ***Drugs, alcohol or other substances***

If you do think you have a substance abuse or dependency problem it is important that you give details even though you may fear that you will be treated unfairly or suffer prejudice as a result. Failure to do so could be treated very seriously.

In practice, Atos doctors see very many people with substance misuse and dependency problems and they are unlikely to treat you any better or worse than they treat other patients. If you are treated harshly or insensitively, don’t hesitate to make a formal complaint.

The fact that you use substances will not invalidate your claim in any way and may allow you to be covered by the exceptional circumstances rules. For example, it may be considered that because of your substance misuse or dependency, you would be a danger to yourself or other people if you were found capable of work.

If you are in, or about to enter, residential rehabilitation you should inform the office dealing with your claim as well as including details in the ‘Other information’ section on page 18. You

will be treated as being eligible for the work-related activity group on any days on which you are in residential rehabilitation. See the section on ‘Should you be in the work-related activity group on exemption grounds?’

## How to explain problems with: 1. Moving around and using steps

### ***The descriptors: what the law says you score points for***

- 1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used**
  - (a) Cannot either
    - (i) mobilise more than 50 meters on level ground without stopping in order to avoid significant discomfort or exhaustion  
or
    - (ii) repeatedly mobilise 50 meters within a reasonable timescale because of significant discomfort or exhaustion. **15 points**
  - (b) Cannot mount or descend two steps unaided by another person even with the support of a handrail. **9 points**
  - (c) Cannot either
    - (i) mobilise more than 100 meters on level ground without stopping in order to avoid significant discomfort or exhaustion  
or
    - (ii) repeatedly mobilise 100 meters within a reasonable timescale because of significant discomfort or exhaustion. **9 points**
  - (d) Cannot either
    - (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion  
or
    - (ii) repeatedly mobilise 200 meters within a reasonable timescale because of significant discomfort or exhaustion. **6 points**
  - (e) None of the above apply. **0 points**

### ***What this activity is about***

This activity is about two different things:  
your ability to ‘mobilise’ on level ground – using a walking stick, manual wheelchair or any other aid it would be reasonable for you to use; and  
your ability to walk up or down two steps using a handrail.

### ***Support group alert***

If descriptor 1(a)(i) or (ii) is accepted by the decision maker as applying to you, then you qualify for the support group.

### ***DLA alert***

If you are getting higher rate mobility then the distance you are assessed as being able to mobilise may be used to look again at your DLA. Bear in mind though, that the criteria are not identical. DLA doesn’t take into account your ability to use a wheelchair or your ability to ‘swing through’ using crutches.

### ***Completing the questionnaire***

**Please tick this box if you can move around and use steps without difficulty.**  
Only tick this box if you’re sure none of the descriptors apply to you.

**Remember!** If this activity causes you severe discomfort, pain, breathlessness or extreme fatigue or if you could do it once but not repeatedly or if your ability varies then you may count as not being able to do it. See the section on: ‘How to show you score points even if you can actually do an activity’ above.

### **Can you move at least 50 metres (about 54 yards) before you need to stop?**

To give you an idea about distances: A double-decker bus is about 11 metres long.

- No.
- Yes.
- It varies

If you tick ‘No’, you are assessing yourself as scoring 15 points and also as being eligible for the support group.

If you tick ‘Yes’ you may still be eligible for a lower scoring descriptor.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be assessed based on what you can manage for the majority of the time.

#### **Warning – imaginary wheelchair!**

The form says ‘By *moving* we mean including the use of aids such as a manual wheelchair, crutches or a walking stick if you usually use one, but without the help of another person.’

However, the law refers to aids that can ‘reasonably be used’ rather than ‘usually’ used and Atos health professionals are told, in relation to 1(a) in particular that:

*“In this activity, the HCP should consider whether a person could potentially use a wheelchair regardless of whether or not they have ever used a wheelchair.”*

It seems probable then, that if you have problems walking you may also be assessed looking at how far you could ‘mobilise’ using a stick or a wheelchair, even if you don’t usually use one. See the ‘Use this space box’ below for more on this

#### **Warning - distance!**

You get 15 points if you can only walk 50 metres or less, 9 points for 100 metres or less and 6 points for 200 metres or less. The form only asks about 50 or 200, so if your ability is between 50 and 100 metres you may wish to write ‘See below’ and give the correct distance in the ‘Use this space’ box.

#### **Warning – repeatedly, reliably, safely!**

The issue is not just whether you could ‘mobilise’ a given distance once, but whether you could do it ‘repeatedly’ and ‘within a reasonable timescale’. So if you would be exhausted after mobilising 50 metres once and would not be able to do it again for some time then that may count as not being able to do it. See the section on: ‘How to show you score points even if you can actually do an activity’ above.

### **Can you move at least 200 metres (about 220 yards) before you need to stop?**

To give you an idea about distances: A double-decker bus is about 11 metres long.

- No.
- Yes.
- It varies

If tick ‘No’, you are assessing yourself as scoring 6 points (unless you’ve also chosen a higher scoring descriptor).

If you tick ‘Yes’ you are assessing yourself as scoring zero points for mobilising, though you may still score points for going up and down steps.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be assessed based on what you can manage for the majority of the time.

### **Use this space**

Give the distance you can walk or wheel a manual wheelchair if you normally use one in this box. (See ‘Imaginary wheelchairs’ at the bottom of this section if you don’t normally use a wheelchair).

Bear in mind: this is about how far you can walk or wheel a manual wheelchair before pain, severe discomfort, fatigue, stiffness, breathlessness or balance problems cause you real difficulties, and whether you could walk the same distance again with reasonable repeatability. If you normally use a walking stick or other aid, then it’s how far you can get using this that counts. If walking causes or worsens abdominal pain, soreness around the anus or other symptoms, say how far you can walk before severe discomfort begins.

If you have chosen ‘It varies’ then you need to explain how much it varies. Any award of points should be based on how you are for the majority of the time. If you have a medical then the health professional should investigate this variability with you and if they fail to refer to it in their report this would be part of your grounds of appeal.

It’s a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook used by Atos health professionals:

- moving around at home;
- shopping and walking around a supermarket;
- exercising pets.

### **Imaginary wheelchair.**

The WCA Handbook suggests that if you have problems walking, you should also be assessed on how far you can propel a manual wheelchair, even if you don’t use one. The DWP have now also issued guidance to decision makers which you can read about in detail in the earlier section in this guide on ‘Aids and appliances’. This guidance supports the view that you should be assessed taking into account how far you could propel a manual wheelchair even if you don’t have one, if it is reasonable to do so.

If there are compelling reasons why you would not be able to cover 50, 100 or 200 metres using a manual wheelchair, for example extreme fatigue or problems with your hands, arms or shoulders, then it may be a good idea to explain in this box.

### **Assumption alert!**

Atos health professionals are told to:

*‘Bear in mind that a person who can easily manage around the house and garden is unlikely to be limited to mobility of less than 200 metres; a person who can mobilise around a shopping centre/supermarket is unlikely to be limited to mobility of less than 800 metres although consideration must be given to the speed of walking, stops and pauses etc. Someone who is only able to move around within their home is unlikely to manage 200m’*

If this isn’t true in your case then say so here – for example, do you always lean on a shopping trolley when walking around the supermarket and stop frequently? Or do you get shop assistants to help you with your shopping or does your partner or carer do the shopping whilst you sit on a chair and wait?

### **Sample answer**

*I suffer with rheumatoid arthritis. The condition has reached the stage where it is extremely painful to walk even a few yards. I have had to move my bedroom to a downstairs room, as I can no longer climb more than one or two steps without experiencing extreme pain. I can just*

*about make it from one room to the next using either a walking stick or furniture for support before having to sit down to recover from the pain. I seldom go shopping and when I do I use a mobility scooter or my wife pushes me in a wheelchair. I could not wheel myself in a chair because of the pain it would cause my hands and shoulders.*

## **Completing the questionnaire - Steps**

### **Going up or down two steps**

**Can you go up or down two steps without help from another person, if there is a rail to hold on to?**

- No.
- Yes.
- It varies

If you tick ‘No’, you are assessing yourself as scoring 9 points.

If you tick ‘Yes’ you are assessing yourself as scoring zero points for going up and down steps, but you may still score points for mobilising.

If you answer ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be assessed based on what you can manage for the majority of the time.

**Warning!** The descriptor refers to using ‘a handrail’ in the singular, but the WCA Handbook claims that even if you need to pull yourself up steps using two handrails rather than one, this doesn’t score points. We think this is incorrect: using two handrails to haul yourself up steps doesn’t seem the same as using one handrail to help you balance. So, if you need two handrails tick No here, give details in the Use this space box and be prepared to appeal if you don’t score the points and fail the test as a result.

### **Use this space**

It’s a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- moving around at home;
- shopping and walking around a supermarket;
- exercising pets.

Also give details of any:

- breathlessness,
- pain in your joints,
- fatigue
- pain from fistulas
- vertigo

If you have to go up and down stairs at home on your bottom or if you have had falls when walking up and down steps give details here.

### **At the medical – walking and steps**

If you have a medical the doctor may ask about things listed in the Use this space section above. They may also ask:

- do you live in a flat or a house with stairs;

- is your bathroom/toilet upstairs;
- do you sleep upstairs or downstairs.

The doctor may observe how:

- you walk from the waiting room to the examination room, including the speed you walk at and whether you have any problems with balance;
- how you walk back to your car or out of the examination centre – doctors often observe people from a window or doorway as they leave the building after their examination;
- the way you climb on and off the couch, including whether you use a footstool – which should be available.

**Remember:** if it hurts, say so. So, if any of these activities cause you pain, fatigue or severe discomfort, don't just suffer in silence: tell the doctor or they may assume you have no problems. And don't feel obliged to do anything the doctor asks you to do if you know it will cause you too much pain or discomfort.

According to the WCA Handbook, claimants who are clearly breathless walking in the examination centre should be considered for the support group.

***Assumption alert!***

Atos health professionals are told to ask about how you travelled to the examination centre. If you came by bus they may know how far it is from the bus stop to the examination centre. They should ask how long it took you to walk, the number of rests required, and the lengths of the rest periods, but again they will often assume you walked from the bus stop at a normal pace and without stopping.

So, if you are asked about how you travelled to the medical, make sure you explain any problems or pain you experienced whilst travelling. Also explain if you were able to sit whilst waiting for the bus or any other ways you were able to make the journey less demanding.

## How to explain problems with: 2. Standing and sitting.

### **What this activity is about**

This activity looks at your ability to:

- move from one seated position to another, such as when moving from a wheelchair to a toilet;
- stand;
- sit.

### **The descriptors: what the law says you score points for**

#### **2. Standing and sitting.**

(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person. **15 points**

(b) Cannot, for the majority of the time, remain at a work station, either:

(i) standing unassisted by another person (even if free to move around) or;

(ii) sitting (even in an adjustable chair)

for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion. **9 points**

(c) Cannot, for the majority of the time, remain at a work station, either:

(i) standing unassisted by another person (even if free to move around) or;

(ii) sitting (even in an adjustable chair)

for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion. **6 points**

(d) None of the above apply. **0 points**

### **Support group alert**

You will qualify for the support group if it is accepted that 2(a) applies:

(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.

### **Completing the questionnaire – standing and sitting**

**Please tick this box if you can stand and sit without any difficulty.**

Only tick this box if you’re sure none of the descriptors apply to you.

**Remember!** If this activity causes you severe discomfort, pain, breathlessness or extreme fatigue or if you could do it once but not repeatedly or if your ability varies then you may count as not being able to do it. See the section on: ‘How to show you score points even if you can actually do an activity’ above.

**Can you move from one seat to another right next to it without help from someone else?**

No.  
 Yes.  
 It varies

If you tick ‘No’, you are assessing yourself as scoring 15 points and also as being eligible for the support group.

If you tick ‘Yes’ you may still be eligible for a lower scoring descriptor.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be based on what you can manage for the majority of the time.

This descriptor relates to such things as being able to transfer from a wheelchair to an ordinary chair or to a toilet or a bed, for example. Health professionals are told that ‘this descriptor reflects a severe restriction of lower and upper limb function.’

Health professionals are also told that ‘the use of simple aids such as sticks/ transfer boards can be taken into consideration’ but hoists should not be.

### **Use this space**

It’s a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- Getting on and off the toilet unaided, without the assistance of another person.
- The use of public transport in the absence of a companion
- The use of an adapted car by a wheelchair dependant person
- Getting in and out of a car; and
- Getting out of chairs or off the bed
- Aids used such as a board or hoist

### **Sample answer**

*My multiple sclerosis has caused loss of strength in my legs to the degree that I am now mainly restricted to my wheelchair. I also suffer with tremors in my arms that prevent me from supporting my weight. Therefore, I require physical help to move from my wheelchair to bed, into the car or getting on and off the toilet. When I am not in my wheelchair I still need help to rise from sitting.*

### ***Can you stay in one place, either standing or sitting, for at least an hour without help from another person?***

This does not mean standing completely still. It includes being able to change position.

No.  
 Yes.  
 It varies

If you tick ‘No’, you are assessing yourself as scoring 6 points.

If you tick ‘Yes’ you are assessing yourself as scoring zero points for standing and sitting, though you can still be awarded points for moving between seated positions.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be assessed based on what you can manage for the majority of the time.

### **Warning – 30 minutes!**

The form only asks about standing or sitting for one hour, but you score 9 points if you can’t stand or sit for more than 30 minutes. If this is the case, make sure you give the correct length of time in the ‘Use this space’ box.

### **Warning – both standing and sitting!**

The law asks about your ability either to stand or to sit at a work station for 30/60 minutes and the ESA50 form asks about your ability to ‘stay in one place, either standing or sitting’. The WCA Handbook, however, tells health professionals:

‘... the person does not have to stand or sit for the whole 30 or 60 minutes. They can alternate between the two. For example, a person may only be able to sit for 30 minutes, but

then stand for 10 or 15 and then sit for another 30 minutes. In this case they would not attract a scoring descriptor as they are able to remain at the workplace for in excess of 60 minutes.’

We consider that this is an incorrect interpretation of the law. If the test is of your ability to remain at a workstation for 30/60 minutes either standing or sitting or alternating between standing and sitting then that is what the law should say.

In addition, the health professional would also need to collect evidence about your ability to rise from sitting to standing without help if they are going to assess a combination of both activities, something which they are not instructed to do. However, if you are unable to rise from sitting to standing you may want to consider giving details in the ‘Use this space’ box.

### ***Use this space - standing***

The legal test is your ability to stand without help from another person even if free to move around.

The WCA Handbook states that:

‘When standing, a person would not be expected to need to stand absolutely still, but would have freedom to move around at the workstation or shift position whilst standing.’

The precise meaning of ‘move around’ is not clear. We would argue that it means not standing stock still but not being able to walk up and down to relieve discomfort either. If you do need to move around then give as much detail as possible and, if you are not happy with the result of your claim, appeal.

Atos health professionals are told that standing can be achieved with the use of aids but that:

‘When standing, the person must be capable of some activity at the workstation, therefore someone who can only stand with the aid of 2 sticks would not be considered capable of “standing” in this context as they could not perform any useful function at the workstation.’

If you need to use sticks to stand for any length of time then give details. If you need to hold a stick with one hand and have limited or no use of the other hand then we would argue that, following the logic of the ESA Handbook, you are not able to stand at a workstation because you will not have the use of either hand to ‘perform any useful function at the workstation’.

It’s a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- Standing to do household chores such as washing up or cooking.
- Standing at queues in supermarkets or waiting for public transport.
- Standing and waiting when collecting a child from school.
- Standing to watch sporting activities.

If you have said that your standing ability varies, give details in this box.

### ***Assumption alert!***

If you say you go shopping or catch buses, the doctor may assume you can stand in queues for 30 minutes or more. So, if you sit on walls or there are seats at the bus stops you use, say so. Likewise, if you go shopping with someone else and they stand in the queue while you sit down or you lean heavily on your shopping trolley while queuing, you need to tell the doctor this. If you stand for a short time without apparent difficulty during the examination, the doctor may assume that you are able to do so for much longer. So, if it hurts, say so and try to make a note of how long you actually stand for uninterrupted during the examination.

### **Use this space – sitting**

For the purposes of this test, you will be assessed on the length of time you could sit in an ‘adjustable’ chair if this would allow you to sit for longer.

The WCA Handbook states that:

‘Inability to remain seated in comfort is only very rarely due to disabilities other than those involving the lumbar spine, hip joints and related musculature. Reported limitations for reasons other than these require thorough exploration and strongly supported evidence. Often, a suitably adjusted chair will overcome many of these issues.’

If you have a different problem, such as painful fistulas, provide as much detail as you can and, if possible, supporting medical evidence.

The WCA Handbook also claims that:

‘Sitting need not be entirely comfortable. The duration of sitting is limited by the need to move from the chair because the degree of discomfort makes it impossible to continue sitting and therefore any activity being undertaken in a seated position would have to cease.’

However, the ‘degree of discomfort’ provision actually comes from the legislation from the previous WCA. The legislators made the choice not to include this phrase in the current regulations. If you need to appeal a decision in relation to sitting you may wish to make the possible misdirection of the health professional one of your grounds of appeal.

It’s a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- Watching television (for how long at a time and type of chair).
- Other leisure or social activities, e.g. listening to the radio, using a computer, sitting in a friend’s house, pub or restaurant, cinema, reading, knitting.
- Sitting at meal times (which may involve sitting in an upright chair with no arms).
- Time spent travelling in cars or buses.

### **Sample answer**

*Following a fall and resultant injury to my coccyx I now find sitting down for long periods of time extremely uncomfortable. The symptoms of this injury have worsened over time so that I can no longer drive unless it is a very short journey. If I have to travel any distance as a passenger I request that we stop every 20 minutes at most so that I can get up and relieve the pressure. Unfortunately, even though I cannot stay sat down for very long, when I stand up the pain is excruciating. Sitting on soft surfaces aggravates the condition, so if I want to watch television I have to either lay down or sit on a dining chair rather than the sofa. This is still uncomfortable but means that I can stay sitting for about 20 minutes, rather than the 10 minutes or so that I could stay on the sofa. I eat meals quickly or get up half way through and move around.*

### **If you have a medical**

The health professional may ask you about the issues listed in the Use this space box above.

They may observe how you sit at the medical: if you sit still without obvious discomfort for say 10 minutes, the health professional may say that you could clearly have sat for much longer. They may also observe how long you stand for when asked to do so during the examination and make assumptions about how much longer you could stand.

**Remember:** if it hurts, say so. So, if sitting or standing causes you pain, fatigue or severe discomfort, don't just suffer in silence: tell the doctor or they may assume you have no problems.

**Assumption alert!**

The health professional is likely to ask you what TV programmes you watch. If you say you watch films, for example, the doctor may assume you can sit for at least 90 minutes. Or if you say you watch Coronation Street the doctor may assume you can sit for at least 30 minutes. So make sure, even if you're not asked, that you tell the doctor if you have to get up during programmes, what sort of chair you sit in, whether it has special cushions or whether you lie on the sofa.

If you say you have been on holiday, perhaps driving from London to Cornwall, the doctor may assume that you can sit for at least three hours. Make sure that, if you do mention any especially long trips, you also make it clear if you had breaks, stood up and walked up and down on the plane or train, etc.

The time you arrived for your medical will have been noted and the doctor may assume, without ever asking, that if you were kept waiting for say half an hour, then you sat for that period. Don't expect to be asked, instead make a point of telling the doctor if you were unable to sit for the whole time.

## How to explain problems with: 3. Reaching

### **What this activity is about**

This activity is about your ability to raise either of your arms.

### **The descriptors: what the law says you score points for**

#### **3. Reaching.**

- (a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket. **15 points**
- (b) Cannot raise either arm to top of head as if to put on a hat. **9 points**
- (c) Cannot raise either arm above head height as if to reach for something. **6**
- (d) None of the above apply. **0 points**

### **Support group alert**

If 3(a) is accepted as applying to you, then you will be placed in the support group.

### **Completing the questionnaire**

**Please tick this box if you can reach with your arms without any difficulty.**

Only tick this box if you’re sure none of the descriptors apply to you.

**Remember!** If this activity causes you severe discomfort, pain, breathlessness or extreme fatigue or if you could do it once but not repeatedly or if your ability varies then you may count as not being able to do it. See the section on: ‘How to show you score points even if you can actually do an activity’ above.

#### **Can you lift at least one of your arms high enough to put something in the top pocket of a coat or jacket while you are wearing it?**

- No.
- Yes.
- It varies

This descriptor is not about whether you have the manual dexterity to actually put something in a breast pocket, just about whether you can actually raise either arm high enough to do so. If you can do so with one arm but not with the other then you will not score points for this descriptor.

If you tick ‘No’ you are assessing yourself as scoring 15 points and as being eligible for the support group.

If you tick ‘Yes’ you are not assessing yourself as scoring points for this descriptor, but there are still two lower scoring descriptors.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be assessed based on what you can manage for the majority of the time.

#### **Warning – hat!**

Although not mentioned on the ESA50 form, there is another descriptor ‘3(b) Cannot raise either arm to top of head as if to put on a hat.’ which scores 9 points.’ If this applies to you, then may wish to write ‘See below’ and give the correct information in the ‘Use this space’ box.

#### **Can you lift one of your arms above your head to reach for something?**

- No.
- Yes.
- It varies

Again, this descriptor is not about manual dexterity, just about whether you can lift one of your arms above head height.

If you tick ‘No’, you are assessing yourself as scoring 6 points (unless you’ve also chosen a higher scoring descriptor).

If you tick ‘Yes’ you are not assessing yourself as scoring any points at all for this activity.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be assessed based on what you can manage for the majority of the time.

### **Use this space**

It’s a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- Dressing and undressing (including reaching for clothes on shelves/in wardrobes)
- Hair washing and brushing
- Shaving.
- Household activities such as reaching up to shelves; putting shopping away at home; household chores such as dusting; hanging laundry on a washing line.
- Leisure activities such as aerobics, golf, painting and decorating.

### **Sample answer**

*I suffer with arthritis and cervical spondylosis, which makes my neck and shoulders sore and stiff, coupled with weakness in my arms. As a result, any activity that involves moving the affected joints e.g. dressing, washing up or reaching into cupboards, causes pain. The numbness in my arms makes these movements clumsy and I tend to knock things over easily. My husband helps me get dressed each morning particularly with tops and coats and I now have a friend who comes to clean for me as I cannot vacuum, put away dishes or do laundry. I now have my hair cut short so that it is less painful to look after. Even so, on most days I can't reach up to wash or dry it with either hand. Usually I have to get my husband to do it. Even a simple task like cleaning my teeth is extremely painful due to the discomfort I experience.*

### **If you have a medical**

The doctor may ask about any of the activities listed in ‘Use this space’ above:

The doctor may observe how:

- You remove your outdoor clothes;
- Whether you are able to hang up your coat or jacket.

**Remember:** if it hurts, say so. So, if any of these activities cause you pain, fatigue or severe discomfort, don’t just suffer in silence: tell the doctor or they may assume you have no problems. And remember, you are free to decline to do things which you think would be too difficult or painful for you.

## How to explain problems with: 4. Picking up and moving things on the same level

### **What this activity is about**

This activity is about your ability to pick up and move objects. It doesn't include being able to carry them however, just move them whilst sitting or standing in one place.

### **The descriptors: what the law says you score points for**

#### **4. Picking up and moving or transferring by the use of the upper body and arms.**

- (a) Cannot pick up and move a 0.5 litre carton full of liquid. **15 points**
- (b) Cannot pick up and move a one litre carton full of liquid. **9 points**
- (c) Cannot transfer a light but bulky object such as an empty cardboard box. **6 points.**
- (d) None of the above apply. **0 points**

### **Support group alert**

If 4(a) is accepted as applying to you, then you will be placed in the support group.

### **Completing the questionnaire**

**Please tick this box if you can pick things up and move things without difficulty.**

Only tick this box if you're sure none of the descriptors apply to you.

**Remember!** If this activity causes you severe discomfort, pain, breathlessness or extreme fatigue or if you could do it once but not repeatedly or if your ability varies then you may count as not being able to do it. See the section on: ‘How to show you score points even if you can actually do an activity’ above.

#### **Picking up things using your upper body and either arm**

**Can you pick up and move a half-litre (one pint) carton full of liquid?**

- No.
- Yes.
- It varies

If you tick ‘No’ you are assessing yourself as scoring 15 points and as being eligible for the support group.

If you tick ‘Yes’ you are not assessing yourself as scoring points for this descriptor, but there are still two lower scoring descriptors.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be assessed based on what you can manage for the majority of the time.

As explained above, this isn’t about picking up a carton and carrying it, just about lifting and moving it at waist level. It also doesn’t matter whether you could pour from a carton of milk, all that is being tested is your ability to pick up and move.

The WCA Handbook argues that if you need to use both hands to pick up the carton that still counts as being able to do it. It also states that you do not need to have two hands to carry out these activities.

Difficulties could be caused by such things as a lack of strength in your arms, poor grip strength or limited movement in your fingers and hands or severe back or neck problems.

**Can you pick up and move a litre (two pint) carton full of liquid?**

- No.
- Yes.
- It varies

See half-litre litre carton above.

If ‘No’ is accepted for this descriptor you will score 9 points, unless you have also selected a higher scoring descriptor.

### **Can you pick up and move a large, light object like an empty cardboard box?**

- No.
- Yes.
- It varies

If you tick ‘No’ you are assessing yourself as scoring 6 points, unless you have also selected a higher scoring descriptor.

If you tick ‘Yes’ you are not assessing yourself as scoring any points at all for this activity.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be assessed based on what you can manage for the majority of the time.

Again, the WCA Handbook argues that you do not need to have two hands to carry out this descriptor and that ‘a person could reasonable [sic] manage this by using one hand and supporting the box against another part of their body.’

### **Use this space**

It’s a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- Cooking (lifting and carrying saucepans, crockery)
- Shopping (lifting goods out of shopping trolley or from the supermarket shelves).
- Dealing with laundry/carrying the laundry
- Lifting a pillow
- Making tea and coffee
- Removing a pizza from the oven/ carrying a pizza box

### **Sample answer**

*The muscle weakness in my arms and hands caused by Motor Neurone Disease has reached the degree that I can no longer pick certain things up e.g. cup of tea as my hands and arms are so unresponsive. I can usually lift a relatively light item like a box of tissues but often I drop it because I cannot control my grip. I can no longer carry bags or prepare food because I cannot keep hold of the objects.*

### **If you have a medical**

The Atos health professional may ask you about the issues in the Use this space, above. They may observe:

- How you remove and hang up a coat or jacket;
- How you lift a bag;
- How you use a hand to open the door.

**Remember:** if it hurts, say so. So, if any of these activities cause you pain, fatigue or severe discomfort, don't just suffer in silence: tell the doctor or they may assume you have no problems. And remember, you are free to decline to do things which you think would be too difficult or painful for you.

## How to explain problems with: 5. Manual dexterity (using your hands)

### **What this activity is about**

This activity is about your ability to use either hand to press, turn, pick-up and manipulate objects.

### **The descriptors: what the law says you score points for**

#### **5. Manual dexterity.**

(a) Cannot either:

(i) press a button, such as a telephone keypad or;

(ii) turn the pages of a book

with either hand. **15 points**

(b) Cannot pick up a £1 coin or equivalent with either hand. **15 points**

(c) Cannot use a pen or pencil to make a meaningful mark. **9 points**

(d) Cannot use a suitable keyboard or mouse. **9 points**

(e) None of the above apply. **0 points**

### **Support group alert**

If 5(a)(i) or (ii) is accepted as applying to you, then you will be placed in the support group.

### **Completing the questionnaire**

**Please tick this box if you can use your hands without any difficulty.**

Only tick this box if you're sure none of the descriptors apply to you.

**Remember!** If this activity causes you severe discomfort, pain, breathlessness or extreme fatigue or if you could do it once but not repeatedly or if your ability varies then you may count as not being able to do it. See the section on: ‘How to show you score points even if you can actually do an activity’ above.

#### **Can you use either hand to do things like:**

- **press a button, such as a telephone keypad**
- **turn the pages of a book**
- **pick up a £1 coin**
- **use a pen or pencil**
- **use a computer keyboard or computer mouse?**

*Some of them*

*None of them*

*It varies*

If you tick ‘Some of them’ you will need to give details of which one(s) in the ‘Use this space’ box. If there is more than one you will be given the points for the highest scoring descriptor that is accepted as applying.

If you tick ‘None of them’, you are assessing yourself as scoring 15 points for this activity and also as being eligible for the support group.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be assessed based on what you can manage for the majority of the time.

If you can do these activities with one hand but not the other then you will not score points.

The WCA Handbook states that using a pen or pencil to make a meaningful mark only relates to the ability 'to make a purposeful mark such as a cross or a tick'. We would argue that at the very least the ability to make such a mark inside a small box on a form should be considered.

Health professionals are told that:

'When considering the use of a keyboard, ergonomic advances in equipment should be considered. The actual familiarity with the use of a PC in technical terms is not considered'

It is possible to buy specially adapted keyboards and mice of various types. However, many of these are very expensive and will not necessarily solve issues with such things as fine motor skills. We suggest that you explain the difficulties you would have with an ordinary keyboard and mouse. If you have tried adapted equipment without success then you may wish to also give details.

### **Use this space**

Give details of any descriptors you have problems with, not just the highest scoring one, as your evidence may be accepted for one but not the other.

You may have difficulties because of limited movement or feeling in your hands or wrists, because of co-ordination problems or because of pain or tremors, for example.

As well as giving details of the specific descriptors you have difficulties with, it's a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- Filling in forms (e.g. ESA50, national lottery ticket)
- Use of phones, mobile phones, setting house alarms, light switches
- Paying for things with either cards or cash
- Coping with buttons, zips, and hooks on clothing
- Cooking (opening jars and bottles; washing and peeling vegetables).
- Leisure activities such as reading books and newspapers; doing crosswords; knitting; manipulating the petrol cap to refuel a car, using keys to open locks etc.

### **Sample answer**

*I have had osteoarthritis for several years, mainly affecting the joints in my thumbs and fingers. I have lumps on these joints, particularly at the base of both my thumbs. I have not been able to complete tasks that require fine movements e.g. holding a pen or pencil, for a number of months. In the morning I can usually do more, for example I can butter my toast or turn on the taps to have a wash. However by lunchtime these tasks have become too painful. By the evening, even after taking painkillers I struggle to turn the pages of my book or hold a toothbrush to clean my teeth.*

*I no longer attempt to peel or chop vegetables because I have cut myself several times and my wife always does the driving and fills the car with petrol because I can no longer manage due to pain in my hands. I cannot handle coins of any sort and have great difficulty putting the correct pin number in when paying for things, to the extent that my wife now does all the shopping.*

### **If you have a medical**

The Atos health professional may ask you about the issues in the Use this space box above. They may observe you handling objects such as a tablet bottle, expenses sheet, repeat prescription, pen, paper or newspaper.

**Remember:** if it hurts, say so. So, if any of these activities cause you pain, fatigue or severe discomfort, don't just suffer in silence: tell the doctor or they may assume you have no problems. And remember, you are free to decline to do things which you think would be too difficult or painful for you.

## How to explain problems with: 6. Communicating with people

### **What this activity is about**

This activity is about being able to communicate with other people verbally or by writing or using a keyboard.

### **The descriptors: what the law says you score points for**

#### **6. Making self understood through speaking, writing, typing, or other means normally used; unaided by another person.**

- (a) Cannot convey a simple message, such as the presence of a hazard. **15 points**
- (b) Has significant difficulty conveying a simple message to strangers. **15 points**
- (c) Has some difficulty conveying a simple message to strangers. **6 points**
- (d) None of the above apply. **0 points**

### **Support group alert**

If 6(a) is accepted as applying to you, you will be placed in the support group.

### **Completing the questionnaire**

**Please tick this box if you can communicate with other people without any difficulty.**  
Only tick this box if you’re sure none of the descriptors apply to you.

**Remember!** If this activity causes you severe discomfort, pain, breathlessness or extreme fatigue or if you could do it once but not repeatedly or if your ability varies then you may count as not being able to do it. See the section on: ‘How to show you score points even if you can actually do an activity’ above.

#### **Can you communicate with someone you don’t know by speaking, writing, typing or any other means without the help of another person?**

- No.
- Yes.
- It varies

If you tick ‘No’ you are assessing yourself as scoring 15 points and as being eligible for the support group.

If you tick ‘Yes’ you are not assessing yourself as scoring points for this whole activity even though there are two lower scoring descriptors – see ‘Warning – degree of difficulty!’ below.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be assessed based on what you can manage for the majority of the time.

#### **Warning – degree of difficulty!**

You score 15 points if you ‘cannot’ convey a simple message, but you also score 15 points if you have ‘significant difficulty’ conveying a simple message to strangers and 6 points if you have ‘some difficulty’. If you can communicate, but only with difficulty, then you may wish to write ‘See Use this space’ rather than ticking any of the boxes and then give details there.

#### **Use this space**

If you can only communicate using sign language than that should count as being unable to communicate as most strangers would not understand sign language.

If you have difficulties with speaking but can write or type, or vice versa, then you are unlikely to score points for this activity.

So, if you have problems that affect both your speech and your hands you may score points for this activity. This could be caused by, for example, a stroke, Parkinson’s Disease or Motor Neurone Disease. Or you may be unable to speak and also have a severe visual impairment which makes writing or using a keyboard very difficult.

Atos health professionals are told that ‘*expressive dysphasia (inability to express ones thoughts) resulting from brain injury*’ may score points, but that the ability to write or type would also have to be considered.

However, if you don’t have any keyboard skills and do not use a computer or other types of keyboard, you may wish to consider pointing out that you don’t ‘normally use’ a keyboard to communicate, so at the very least you would have ‘significant difficulty’. The DWP are likely to argue that it is your physical ability to use a keyboard, rather than your knowledge of how to do so, that counts. Ultimately it would be for a tribunal to make the final decision.

Absolutely no guidance is given in the WCA Handbook as to how to distinguish between ‘has significant difficulty’ and ‘has some difficulty’.

At this stage, all we can advise is that you should give very detailed information about the difficulties you experience and, if you are not happy with the decision, consider appealing.

Health professionals are told that claimants with ME/CFS may say that their speech is unclear when tired and people with panic attacks may say they have difficulty making themselves understood. The WCA Handbook suggests carrying out a mental health assessment in these cases.

The Handbook also says that where people have difficulty making themselves understood when breathless this is only likely to happen when they have undertaken extra physical effort rather than most of the time. If they are breathless all the time, health professionals are told they should be considered for the support group.

### **Use this space**

It’s a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- The ability to socialise with family and friends
- The ability to ask for items e.g. order drinks at a bar or ask for items in a shop where self –service is not available – do they use speech or do they write a list and hand it over.
- Ability to use public transport/ taxis.
- Ability to use a telephone.
- Ability to use text/e-mail.
- Ability to deal with correspondence, complete ESA 50 may give information about written communication.

### **Sample answer**

*One of the difficulties that I have as a result of suffering from Parkinson’s disease is that I struggle to make myself understood verbally. I have trouble controlling both the volume and speed of my speech, which results in me speaking very slowly and quietly. Often I involuntarily repeat words and in general my sentences become a slurred, jumble that people have difficulty understanding. Family and friends have become very patient and spend a lot of time ensuring they have understood me correctly. However, when in circumstances that require me to talk to other people e.g. shops, the Jobcentre etc it is very difficult to get across what I am trying to say. On many occasions people have become impatient which makes it*

*even more difficult to control my speech. I no longer use the phone for all the above reasons and have family members that act on my behalf in circumstances where telephone contact is necessary.*

*I also struggle to write and would have great difficulty using a keyboard because of the severity of my tremors. Even if I manage to write, other people would have great difficulty reading my handwriting. I do not use a computer but it would be a very slow and laborious task for me to type any kind of message because of the difficulty of striking the correct key due to my tremors.*

### **If you have a medical**

The Atos health professional will ask you about the issues in the Use this space box above. They may also, for their report, describe the quality of your speech and any difficulty they have understanding you. They will also assess your hand function to decide if you would have any difficulty with writing or typing.

## How to explain problems with: 7. Other people communicating with you

### **What this activity is about**

This activity is about being able to understand communications from other people, either spoken or written.

### **The descriptors: what the law says you score points for**

**7. Understanding communication by both verbal means (such as hearing or lip reading) and non-verbal means (such as reading 16 point print) using any aid it is reasonable to expect them to use; unaided by another person.**

- (a) Cannot understand a simple message due to sensory impairment, such as the location of a fire escape. **15 points**
- (b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment. **15 points**
- (c) Has some difficulty understanding a simple message from a stranger due to sensory impairment. **6 points**
- (d) None of the above apply. **0 points**

### **Support group alert**

If 7(a) is accepted as applying to you, then you will be placed in the support group.

### **Completing the questionnaire**

**Please tick this box if you can understand other people without any difficulty.**

Only tick this box if you're sure none of the descriptors apply to you.

**Remember!** If this activity causes you severe discomfort, pain, breathlessness or extreme fatigue or if you could do it once but not repeatedly or if your ability varies then you may count as not being able to do it. See the section on: 'How to show you score points even if you can actually do an activity' above.

**Can you understand other people – by hearing, lip reading, reading or using a hearing aid – without the help of another person?**

- No.
- Yes.
- It varies

If you tick 'No' you are assessing yourself as scoring 15 points and as being eligible for the support group.

If you tick 'Yes' you are not assessing yourself as scoring points for this whole activity even though there are two lower scoring descriptors – see 'Warning – degree of difficulty!' below.

If you tick 'It varies', you will need to give full details in the 'Use this space' box. Your ability should be assessed based on what you can manage for the majority of the time.

### **Warning – change of guidance!**

On 25 November the guidance issued to Atos health professionals about this activity was changed. From 28 March 2011, when this activity was introduced, until 25 November 2011 guidance to health professionals was that if a person could understand a message through either the written or spoken word, they were unlikely to score points for this activity.

However, that guidance has now been changed so that if a person has problems with vision or with hearing they may score points. But decision makers have also been told that the ability to read braille should now be taken into account – in spite of two of the descriptors referring to communication from a stranger.

So, health professionals are now told that:

*A person who has normal hearing but very poor sight to the extent of being unable to read 16 point print with no ability to read Braille will be likely to be awarded 7(a).*

*A person who has normal vision and can easily understand the written word, but who cannot hear at all and is unable to lip read will be likely to be awarded 7(a).*

*A person who has no restriction of hearing but has some restriction of reading 16 point print with no ability to read Braille is likely to attract descriptor 7(c).*

*A person who has some restriction of hearing and struggles to hear a shout at 1 metre but in addition has some reduction of vision who can still read 16 point print but struggles with lip reading, may be awarded 7(c) or 7(b) depending on the level of their difficulty in understanding the spoken word, despite being able to read 16 point print.*

*A person who cannot see 16 point print but can read Braille and hears normally, would be likely to be awarded 7(d)*

It should be borne in mind that this is merely guidance and tribunals, for example, may interpret the law differently. However, it does mean that the DWP is now awarding more points to some people than it was before the new guidance was issued and placing some people in the support group who would not have qualified previously.

It is not clear if decision makers have been issued with similar guidance or whether the DWP is to take any steps to look again at decisions relating to claimants who were assessed using the ‘wrong’ guidance. If you have any concerns about this, please try to get advice from an advice agency.

### **Warning – degree of difficulty!**

You score 15 points if you ‘cannot’ understand a simple message, but you also score 15 points if you have ‘significant difficulty’ understanding a simple message from a stranger and 6 points if you have ‘some difficulty’ understanding a simple message from a stranger. If you can understand simple messages but only with difficulty then you may wish to write ‘See Use this space’ rather than ticking any of the boxes and then give details there.

### **Warning – stranger!**

The question on the form is highly misleading. To score 15 points and be put in the support group you need to show that you cannot understand a simple message. However, you also score 15 points if you have significant difficulty, and 6 points if you have some difficulty, understanding a simple message ‘from a stranger’. So, as well as the issue of degree of difficulty there is also the issue of strangers.

If you can understand communications from people you know, but have difficulty understanding strangers then you should score points.

### **Use this space**

It’s a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- Consider any restrictions reported in the typical day with communication such as difficulty socialising, shopping and engaging in hobbies.
- Note the use of any accessory aids such as headphones or loop system amplification for TV, radio, or video; amplification for telephone handset; loud front door bells or door lights.
- Note the use of any accessory aids such as reading glasses, large print books, magnifying glasses, talking books etc.
- Consider their visual abilities, such as reading a newspaper, e-mails, use of the internet, watching TV etc.
- Consider day to day tasks where contact with other people is likely such as in the supermarket, using public transport etc.

If you have tinnitus or Meniere’s disease, describe any effects on your ability to hear and also any treatment you have received which may show the seriousness of your condition, such as: referral to a specialist; use of hearing aids, prescription of vasodilators, anti-depressants or sedatives. If your condition affects your concentration or your mood also consider completing the mental function section of this questionnaire.

### **Sample answer**

*I was born without correctly functioning nerve receptors in my middle ear, which has resulted in tone and frequency loss. The hearing loss is present in both ears but it is worse in my right side. The frequencies that I struggle most to hear are those contained in speech. Also, doorbells, the sound of people walking and certain sirens. If there is a lot of background noise such as the television, crowds of people, traffic etc I am not able to hear what an individual is saying to me particularly if their voice is quite high or deep. I often won't hear warning sounds like car horns, shouts or someone running up behind me. Shopping can become quite stressful, as I usually have to ask shop assistants to repeat themselves or talk more clearly. I was fitted with hearing aids a couple of years ago but I find they give me headaches because for the first time in my life I can hear everything and it is incredibly overwhelming and disorientating to wear them in busy places like shopping centres and supermarkets. At home I have a loop system and a doorbell that flashes the house lights when rung.*

*Because of my visual impairment I also have great difficulty in reading ordinary type or handwriting and in lipreading.*

### **If you have a medical**

The Atos health professional will observe your response to their speaking in an ordinary or quiet voice. In some cases they may carry out a ‘Conversational Voice test in which the claimant is asked to respond to questions whilst facing away from the health professional. More details about this are given in the WCA Handbook.

## How to explain problems with: 8. Getting around safely

### **What this activity is about**

This activity is about problems with ‘navigating’ in familiar and unfamiliar places because of visual impairment.

### **The descriptors: what the law says you score points for**

**8. Navigation and maintaining safety, using a guide dog or other aid if normally used.**

- (a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment. **15 points**
- (b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment. **15 points**
- (c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment. **9 points**
- (d) None of the above apply. **0 points**

### **Support group alert**

None of these descriptors will allow you to be placed in the support group.

### **Completing the questionnaire**

**Please tick this box if you can get around safely on your own.**

Only tick this box if you’re sure none of the descriptors apply to you.

#### **Can you see to cross the road on your own?**

- No.
- Yes.
- It varies

If you tick ‘No’ you are assessing yourself as scoring 15 points.

If you tick ‘Yes’ you are not assessing yourself as scoring points for this descriptor, but there are still two other descriptors.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box. Your ability should be assessed based on what you can manage for the majority of the time.

#### **Can you get around a place that you haven’t been to before without help?**

- No.
- Yes.
- It varies

If you tick ‘No’ you are assessing yourself as scoring 9 points (unless you have also selected a higher scoring descriptor).

If you tick ‘Yes’ you are not assessing as scoring points for this activity at all, unless there is a reason why you can cross roads safely but cannot navigate around unfamiliar places.

If you tick ‘It varies’, you will need to give full details in the ‘Use this space’ box.

#### **Warning – familiar places.**

You score 15 points if you are unable to navigate around familiar places without help from someone else. If this is the case give details in the ‘Use this space box’. You may be able to answer ‘No’ to both the questions above as well.

### **Use this space**

It's a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- Driving – both from the visual acuity and visual field point of view
- Ability to get around indoors
- History of falls or accidents
- Ability to use public transport- get on and off buses unassisted and read the bus name and number
- Mobilising independently outdoors
- Going to a supermarket
- Reading newspapers or magazines
- Maintaining safety in the kitchen, ability to cook meals
- Getting in and out of a bath
- Caring for children

If you use aids, such as a white stick or a guide dog, but they still do not mean that you can navigate safely, you will need to explain in detail what the problems you face are. Clearly crossing a road with a white stick is exceedingly hazardous, but could you do it safely with your guide dog where there is no pelican or zebra crossing?

The Atos health professional is not allowed to assess you with a guide dog unless you actually have one – happily there are not yet imaginary guide dogs to go with the imaginary wheelchairs.

### **Sample answer**

*My sight has been affected by retinopathy and associated blurred and obscured vision. As such I am now unable to drive or even travel on my own as I cannot read signs or see dangers such as cyclists. It is no longer safe for me to cross roads unaccompanied because I cannot be sure that I have seen oncoming traffic. I trip often because the dark streaks in my vision prevent me from seeing some obstacles e.g. kerbs, bollards etc and I recently walked into a small child because my sight of him was blocked. This was most upsetting and resulted in my refusal to go outside of my home without someone to guide me.*

### **If you have a medical**

The Atos health professional may ask you about the issues in the Use this space box above and about how you got to the examination centre. They may observe how you move about indoors and whether you can read things like labels on your medication and your expenses sheet.

Health professionals are told that: ‘This activity not only relates to visual acuity (central vision and focus) and visual fields (peripheral vision) but takes into account the persons ability to adapt to their condition. The person’s confidence and training must be taken into account.’

If you have lost your sight suddenly, Atos doctors are told, then you are less likely to have adapted quickly to your condition. They are also told to take into account any other health issues, which might exacerbate your problems with navigating safely. For example, if you have problems with memory or concentration as well as visual impairment, this may make it even more difficult to navigate safely.

Your near vision will be checked using a chart. Visual field testing is done using the ‘confrontation method’ in which you cover one eye with a piece of card and the health professional holds their arms out and asks you to describe their hand movements whilst looking directly into their eyes. There are more details on this in the WCA Handbook.

## How to explain problems with: 9. Controlling your bowels and bladder and using a collecting device

### **What this activity is about**

This activity is about your ability to control your bowels or your bladder or to use a stoma device or catheter without leakage.

We know that some people find it very difficult to answer questions about these issues either on paper or at a medical. But it is vital that you give all the relevant details about your incontinence or problems with stoma devices to ensure you get all the points you are entitled to.

### **The descriptors: what the law says you score points for**

**9. Absence or loss of control leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting) despite the presence of any aids or adaptations normally used.**

(a) At least once a month experiences

(i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or

(ii) substantial leakage of the contents of a collecting device;

sufficient to require cleaning and a change in clothing. **15 points**

(b) At risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly. **6 points**

(c) None of the above apply. **0 points**

### **Support group alert**

None of these descriptors will allow you to be placed in the support group. However, if it is accepted that 9(a) applies at least once a week, rather than once a month, then you will be placed in the support group.

### **Completing the questionnaire**

**Please tick this box if you can control your bowels and bladder without any difficulty.**  
Only tick this box if you’re sure none of the descriptors apply to you.

**Do you have to wash or change your clothes because of difficulty controlling your bladder, bowels or collecting device?**

A collecting device is also known as a stoma.

Weekly.

Monthly.

Less often

If you tick weekly you are assessing yourself as scoring 15 points and also as being eligible for the support group.

If you tick ‘monthly’ you are assessing yourself as scoring 15 points for this activity, but not as being eligible for the support group.

If you tick ‘Less often’ you are unlikely to be awarded points for this activity, but see ‘Warning – staying close to a toilet!’ below.

The WCA Handbook states that:

‘The descriptors do not refer to minor degrees of leakage that could be managed by the use of pads and not necessitate a full change of clothing. If a person is not using pads, they should be considered as if using pads as these are a widely available aid.’

So when giving information in the ‘Use this space’ box you will need to include details of episodes of incontinence and what steps you had to take afterwards. If you normally carry washing equipment or a change of clothes, give details of this too.

### **Warning – staying close to a toilet!**

You don’t only score points if you actually have episodes of incontinence, but also if you have to manage your life in such a way that you are always close to a toilet in order to avoid doing so.

If this is the case you may score 6 points for this activity. Give as much detail as you can in the ‘Use this space box’ about the condition that causes the problem and the ways that you organize your life to try ensure that you can always get to a toilet quickly. Give details of any medication you have used to try to control the problem and whether it has been effective. Also explain whether you have used pads and, if so, why they are not effective

### **Night-time incontinence**

According to the handbook, *‘Incontinence which occurs only while asleep (enuresis) is not regarded as incontinence in terms of the legislation as, with the appropriate personal hygiene, this will not affect the person’s functioning whilst awake.’* However, enuresis is defined as ‘involuntary urination’ only, suggesting that bowel incontinence even when sleeping is not excluded from the legislation and may score points. If you do suffer from night-time bowel incontinence give details in the Use this space box. But you may have to go to a tribunal hearing if you wish to try to score points on these grounds.

### **Fits**

The Handbook also advises that no points should be awarded for incontinence during a fit because *‘a fit happens during a period when there is a period of altered consciousness, so incontinence will not of itself affect functioning.’* However, many people who have fits do not also experience incontinence - it is not an inevitable part of having a fit - and there does not appear to be anything in the legislation to prevent points being scored both for a fit and for an episode of incontinence occurring at the same time. Again, you may well have to go to a tribunal if you need to try to score points for this.

## **Use this space**

### **Use this space**

It’s a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook

- Shopping trips
- Visits to friends or relatives
- Other social outings

You should give information about the frequency and length of any outings.

### **Sample answer 1**

*Since I started suffering from Ulcerative Colitis I have had a recurring loss of control over my bowels. I get very little warning that I need to “go”, often only seconds and if I am unable to reach a toilet I will completely lose control. This is intensely embarrassing. I can sometimes go weeks without any trouble at all but I cannot predict when I am likely to get an uncontrollable urge. It happens on average at least once a month. It happened twice at work, where I soiled myself and had to go home, before I became so ill that I was unable to*

*continue working. This issue coupled with the pain and fatigue of my condition has seriously reduced my quality of life. I no longer go out socially for fear of an episode and if I go shopping I make sure I only go to places where I know where all the toilets are.*

### **Sample answer 2**

*Shortly following my colostomy I developed a hernia below the incision site. This has affected the efficiency of the stoma causing it to leak faecal matter, which in turn has created skin problems, ulcers and a constant odour. Even a small amount of leakage means that I need to wash and change and it is not possible to apply any kind of pad because of the position of the stoma.*

## How to explain problems with: 10. Staying conscious when awake

### **What this activity is about**

This activity is about having fits, absences or something like that during the day when you are awake.

### **The descriptors: what the law says you score points for**

#### **10. Consciousness during waking moments.**

(a) At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration. **15 points**

(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration. **6 points**

(c) None of the above apply. **0 points**

### **Completing the questionnaire**

**Please tick this box if you do not have any problems staying conscious while awake.**  
Only tick this box if you're sure none of the descriptors apply to you.

#### **While you are awake, how often do you have fits or blackouts?**

- Weekly.
- Monthly.
- Less than monthly

If you tick weekly you are assessing yourself as scoring 15 points.

If you tick 'monthly' you are assessing yourself as scoring 6 points for this activity.

If you tick 'Less than monthly' you are not assessing yourself as scoring any points for this activity.

It isn't just fits or blackouts that are covered by this activity, but any episodes of lost or altered consciousness that significantly affect your awareness or concentration. This could include: generalised, partial or absence seizures, cardiac arrhythmia, hypoglycaemia.

The Handbook claims that giddiness, dizziness and vertigo are not covered by this activity. However, there is caselaw in relation to the personal capability assessment for incapacity benefit which suggests that vertigo may cause lost or altered consciousness.

The Handbook also claims that migraine, even with an aura, is not covered. This was the case under the previous test for incapacity benefit. However, the wording of the this ESA consciousness test is sufficiently different that this may no longer be true. So if you do have severe migraines, give details in the Use this space box and be prepared to argue your case at a tribunal if necessary.

This activity relates to fits that happen when you are awake: any fits or other episodes that occur whilst you are asleep are not taken into account.

#### **Use this space**

It's a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- Driving – Atos staff are told the DVLA will refuse to issue a licence to anyone who has had a daytime fit in the past year.
- Potentially hazardous domestic activities such as cooking.
- Recreational activities e.g. swimming, contact sports.

### **Sample answer**

*I suffer with epilepsy, which results in regular partial seizures. These seizures are a daily occurrence and on occasion I can have up to 5 episodes a day. The main symptoms of my seizures are inability to recognise the familiar e.g. people or surroundings, intense feelings of panic and memory loss. The symptoms can come on so suddenly and without warning that I could be in the middle of a conversation or crossing a street. Once I was on a train alone when I had a seizure, I could not understand how I got on the train or where I was going, which combined with the feelings of panic was absolutely terrifying. Sometimes an episode will only last a few moments or it can continue for up to an hour. Either way it will leave me very confused, tired and tearful for hours afterwards. Quite often my memory of events prior to the attack is affected so I find it difficult to concentrate on anything for much of the time.*

## Mental, cognitive and intellectual functions

If you have a mental health condition, learning difficulty or a brain injury there is a mental, cognitive and intellectual functions test in addition to the physical test in the limited capability for work assessment. Any points you score for this are added to your physical health points. A total of 15 points from your combined score is sufficient for you to pass the test and be found to have limited capability for work.

So, it's very important that if you do have a condition such as depression or anxiety in addition to your physical health condition, that you fill in this section of the questionnaire too.

We publish an entirely separate guide to the mental, cognitive and intellectual functions test which you can download from the members area of [www.benefitsandwork.co.uk](http://www.benefitsandwork.co.uk)

## Providing ‘Other information’

Use this space for any additional information you haven't had room for. If you need still more room then use additional sheets. But make sure you write your name and national insurance number on each one and staple them firmly to the questionnaire.

If you are sending in the form after the deadline then give reasons here. For example, you may have been too unwell to complete the form or have been in hospital.

If the DWP do not accept your reasons for being late then you have the right to appeal to a tribunal. (See: General advice about completing the questionnaire).

## Signing the ‘Declaration’

You have to sign and date the form before you send it. Even if someone else filled it in for you, you must read the evidence given – or have it read to you – and then sign the form yourself. It is only if someone else is your appointee that they can sign the form for you.

You are signing to say that the information is ‘correct and complete’. If you've followed this guide then that will certainly be the case.

You are also signing to say that you understand that you must promptly tell the office that pays your benefit of anything that may affect your entitlement to, or the amount of, that benefit. Depending on whether you receive income-related ESA or contribution based ESA or both, this could mean things like:

- a change in your health condition outside its normal variation;
- you start doing any sort of paid or unpaid work;
- a change in who is living in your household;
- you begin to receive an occupational pension;
- you receive a bequest in someone's will;
- your award of another related benefit, such as income support, increases or decreases.

These are only examples. The safest rule is, if in doubt, tell the DWP. And, please, do it in writing and keep a copy because if you do it by phone they may deny the call ever happened and you could end up facing a huge repayment and even accusations of fraud.

## Completing page 20

### **For people filling in this questionnaire for someone else.**

If someone else is helping you to fill in the form but you are going to sign it yourself then we would say that it is up to you whether this part is completed or not.

However, the DWP seem often to be suspicious about evidence given by claimants themselves, particularly where conditions such as back problems, CFS/ME or fibromyalgia are involved. So, if you get help from a social worker, housing worker, health professional or someone similar, it may actually be to your advantage for them to complete this section.

### **What to do next**

If you have any additional evidence, particularly medical evidence, you want to submit, send copies (not the originals) with this form as well as taking them along if you have to have a medical. Tick the box to say you are including them.

If you wish to have any face-to-face medical recorded, you may wish to enclose a letter to this effect now, though it would be wise to follow up with further letters if you are given a date for an assessment. See the section on '*Preparing for a medical examination*' for more on this.

### **Would you like us to tell anyone else about this assessment?**

If you would be too anxious to deal with letters or telephone calls in connection with this claim and you have a relative or support worker, for example, who is prepared to deal with the DWP then give their details here.

### **And finally . . .**

Well done for sticking with it – you've reached the end of what is probably the most unfit for purpose form the DWP have ever managed to produce. We're sure it hasn't been easy. But if you've followed our guidelines you can at least reassure yourself that you've given yourself the best possible chance of getting the right decision.

Please do remember to take a copy before you send the form off, if you possibly can. And also either post it recorded delivery or get a free certificate of posting from the post office, so that if it does get lost you can prove that you sent it within the deadline.

## **Supporting evidence means more chance of success**

### **What counts as evidence**

The decision about whether you pass the assessment is based entirely on evidence.

The questionnaire you complete is evidence, as are the fit notes filled in by your GP and the report of the Atos health professional if you have to have a medical. The more evidence you can submit to support your claim, the better the chances of success. You can submit both medical evidence from your GP and other health professional and non-medical evidence from friends and relatives, amongst others. Before we look at different sorts of evidence in more detail, there are some general rules about supporting evidence.

### **The importance of medical evidence**

Following the first independent review of the work capability assessment by Professor Harrington in 2010, the DWP claim that they have now empowered decision makers to take a much more proactive role in deciding claims, rather than simply acting as a rubber stamp for Atos health professionals' reports.

This should mean that instead of accepting the Atos findings in 98% of cases, as was happening before Professor Harrington's recommendations were accepted and implemented in 2011, decision makers should take into account all available evidence and reach their own conclusion. In the words of a minister the importance of the Atos report has been 'downgraded'.

However, this means that either the claimant or the decision maker must collect additional medical evidence in order to have something to set against the Atos evidence, other than your completed ESA50 form. So, if you possibly can collect medical evidence then do so. If you can't, for example because your GP or specialist will only supply it in return for a large fee then ensure that the decision maker is aware of the health professionals that you think should be contacted.

If the decision maker fails to contact your health professionals, but relies instead solely on an Atos report, or on no report at all, then this is an issue you may wish to raise at an appeal.

### **Incapacity to ESA claimants**

If you are being transferred from incapacity benefit to ESA then there is a real possibility you will be placed in either the work-related activity group (WRAG) or the support group without having a medical. This appears to happen to a much higher proportion of IB to ESA transfer claims than it does to ordinary ESA claims.

This may make it even more important that you try to get medical evidence to support your claim if you possibly can. In the absence of a medical report from an Atos health professional it will be much harder for a decision maker to discount any medical evidence that you provide.

### **Guidelines for collecting supporting evidence.**

Always try to arrange to have letters sent to you rather than direct to the DWP. If your doctor is reluctant to do this, point out that you want to keep a copy for your records because it is far from unknown for the DWP to lose papers. Read any evidence before you submit it. If there are points in it that are incorrect or missing and this might damage your case, try contacting the writer and asking them to send you an altered version. If they won't do this, or if the evidence is unhelpful for any other reason, then simply don't submit it.

If you write to someone asking for evidence, it's really important that you keep a copy of the letter you sent them. If you have to go to an appeal hearing the tribunal may insist on having a copy of any letter you wrote to your GP or other health professional asking for evidence. If you don't provide it they may adjourn the hearing in order to allow you to contact your doctor and get a copy. The reason they do this is to see how much of the information the doctor provides is simply taken from the letter you wrote, rather than based on the doctor's prior knowledge. However, it may then be three months or more before the hearing gets relisted.

If you wish to avoid having to submit letters you wrote asking for evidence, then simply don't write any.

Instead, make an appointment to see your health professional or go and visit or telephone friends or relatives and explain to them in person what it is you require. Take a copy of the descriptors with you and discuss which ones you think apply to you and why, if necessary. If you do have to attend a hearing you will have to say that this is what you did if you are asked.

### ***Medical evidence from your GP***

Under their contracts, GPs are obliged to complete certain forms for the DWP and are not paid separately for doing so. GPs are not under any obligation to provide supporting letters to patients, however. Some are happy to do so, some will not do so and some will only do so if paid.

### ***Medical evidence from health professionals other than your GP***

This can include letters from an occupational therapist, specialist nurse, consultant or any other health professional you see.

If possible, it's always best to make an appointment to talk to the health professional. Tell them about the kind of problems your condition causes in relation to your everyday life and the kind of evidence you would like them to provide.

However, some health professionals may refuse to write you a letter, saying that it's now a matter for the DWP, or they may say they will only write a letter if you are willing to pay for it. Health professionals are not under any duty to provide you with supporting letters, so unfortunately they are within their rights to refuse or to ask for money.

Sometimes a health professional will say that they will only write if the DWP contacts them. This may be because they can charge the DWP for providing evidence. However, the DWP may not contact people such as consultant psychiatrists for evidence, even if you very rarely see your GP and your psychiatrist knows a great deal more about you.

### ***Commissioning medical reports***

If you are found not to have limited capability for work and appeal against the decision, you may be able to commission a report from a consultant or your GP under the Legal Help (formerly the Legal Aid) scheme. To find out if you are eligible for legal help contact a solicitor, advice centre or law centre funded under the Community Legal Services scheme. (See the help section at the end of this guide for details of how to do this).

### ***Non-medical evidence***

Decision makers have to take into account all relevant evidence. This includes any letters from friends, relatives, carers, neighbours and support workers such as social workers and housing workers. If you live with someone, a partner or family member for example, they may be able to provide very detailed evidence about the way your condition affects you.

It can be very upsetting asking people to write about you in this way, try to ensure that you have someone to give you support, or possibly to approach people for evidence on your behalf.

### ***How and when to submit supporting evidence***

You can submit supporting evidence, especially medical evidence with your ESA50 questionnaire. There is a tick box on page 20 of the form to say you have done so. If at all possible, don't send the original letters, take photocopies and send those – it's far from unknown for the DWP to lose evidence.

Because the time for completing and returning the ESA50 has been reduced from six weeks to 4 weeks, it may be difficult to obtain supporting evidence in time to submit it with your form. If so, do not delay returning your form – it's vital that you return it within the deadline. Instead, submit any further evidence as soon as you get it.

We would also recommend you take copies along to your medical if you have to have one, just in case the ones you sent with your form have not got separated. The WCA Handbook informs Atos health professionals that:

‘At times the claimant may also bring additional evidence to the assessment. **Any evidence bought [sic] by the claimant must be read** and the report should make reference to the evidence that has been considered and justification provided if there is a conflict between the opinion of the HCP and the other medical evidence. Any evidence brought by the claimant, should be copied for the Decision Maker.’

## **Medical examination – will you have to have one?**

Nobody can be found not to have limited capability for work and refused ESA without first having a medical. But some people will be awarded ESA without having a medical.

If you have a serious condition and you clearly meet the criteria for limited capability for work and/or limited capability for work-related activity and there is medical evidence to support this then you may not have to have a medical. The medical evidence may be just a fit note (what used to be called a sick note) from your GP. Alternatively, the DWP may contact your GP or other health professional for a more detailed report, usually an ESA113 or a Factual Report which asks specific questions about your condition and how it affects you.

It is very definitely worth considering contacting your GP and any other health professionals involved in your care as soon as you make a claim for ESA. Update them about how your condition affects you, especially in relation to any activities in the physical health test that you think you may score points for.

If you can obtain supporting medical evidence and send copies (not originals) with your ESA50 questionnaire this can make a big difference to whether you have to have a medical.

### ***Incapacity to ESA claimants***

If you are being transferred from incapacity benefit to ESA then there is a real possibility you will be placed in either the work-related activity group (WRAG) or the support group without having a medical. This appears to happen to a much higher proportion of IB to ESA transfer claims than it does to ordinary ESA claims.

If you are placed in the WRAG and you are unhappy with this decision because you think you should be in the support group, then you may wish to consider an appeal. See our appeals guide for more about this.

### ***Who carries out the medical***

It may not be a doctor who carries out your medical. The law allows Atos to use any registered health professional. So your assessment could be carried out by a nurse or an occupational therapist, for example. Many health professionals get paid per assessment by Atos rather than getting a wage, so the faster they get through them the more they earn.

### ***The WCA Handbook***

You will find frequent references to the WCA Handbook throughout this guide. The Handbook is produced by Atos and is both a training resource and a manual for health professionals carrying out ESA assessments. Although the vast majority of medicals are carried out using computer software called ‘LiMA’ – which we deal with later in this guide – the Handbook sets out how Atos and the DWP believe the descriptors in the assessment should be interpreted. It also tells doctors how to carry out an assessment.

Please note though that the WCA Handbook is only guidance, it is not the law. There are a number of ways in which we think the WCA Handbook misrepresents the law and leads health professionals to produce unreliable evidence. We alert you to these as we take you through the process of completing the ESA50 questionnaire. If you are found capable of work and appeal the decision, these possible errors can form part of your appeal.

You can download a copy of the Handbook from the members area of  
[www.benefitsandwork.co.uk](http://www.benefitsandwork.co.uk)

## **Preparing for a medical examination**

We don't want you to be overly concerned about having a medical examination. As we have explained elsewhere, many people with long-term health conditions are awarded ESA without having an examination at all. And even if you do have to have one, it is likely to last no more than half an hour to an hour and consist mostly of the doctor asking you questions about your everyday life.

Nevertheless, the doctor's opinion will be taken very seriously by the decision maker, so it's a good idea to be well prepared if you go for a medical.

### ***Getting your appointment***

If you are required to attend a medical you should receive at least 7 days notice unless you agreed to accept a shorter period of notice in writing or otherwise.

Atos Healthcare generally try to arrange medicals by telephone and may leave messages warning you that your benefit may be affected if you do not return their calls. Alternatively they may write to you telling you that you must contact them within 48 hours to arrange an appointment.

If you are not able to use a telephone because of a mental health condition then insisting that you use one may be a breach of the Equality Act (formerly the Disability Discrimination Act).

If you wish to have someone with you then you will need to check with them whether they are available before agreeing to attend on the suggested date.

### ***Do I have to attend the medical?***

Yes you do. If you fail to turn up to the medical without good cause you will not be eligible for ESA. So, if you do miss the appointment, contact Atos immediately, explain why and ask for another appointment. If this is refused and your benefit is stopped, try to get advice as quickly as possible from a welfare rights worker. You can appeal against the decision to find you capable of work.

Matters to be taken into account when deciding if you had good cause for not attending a medical include:

- (a) whether you were outside Great Britain at the relevant time;
- (b) your state of health at the relevant time; and
- (c) the nature of any disability you have.

If you cannot attend the appointment because you are too ill to travel or have another appointment, such as a hospital visit which you cannot rearrange, then contact Atos as soon as possible to rearrange the appointment. If you do this by telephone, make sure you get the name of the person you speak to and follow up your call with a letter confirming what was agreed.

### ***Having a medical at home***

If you are unable to attend a medical examination centre because of your health condition or disability, then you should be able to have a medical at home. However, you should be aware that a home medical will not be granted unless you can provide evidence that it is genuinely necessary. Medical evidence that you are unable to travel to an examination centre will make a big difference to the strength of your case.

According to the FAQ's on the Atos website, you can also be granted a home medical if your local examination centres are not accessible:

“If an assessment centre is not on the ground floor and you cannot use the stairs in the event of an emergency, we will look at an alternative venue or a home visit for you.”

[http://www.atoshealthcare.com/index.php?option=com\\_content&task=view&id=68&Itemid=428](http://www.atoshealthcare.com/index.php?option=com_content&task=view&id=68&Itemid=428)

If you are unable to use stairs safely in an emergency, make sure you check whether the centre you are being sent to is on the ground floor as soon as you receive your appointment. If it isn't, contact Atos and ask them to make alternative arrangements.

### ***Preparing for questions***

Before you attend the assessment, try to read through what you wrote on your questionnaire and have a look at any other evidence you have submitted. This might help to remind you of things you want to tell the doctor. In addition, it would be worth checking the section in this guide on questions you are likely to be asked at your medical examination.

### ***Caution! Travelling to the medical***

You can claim travelling expenses for going to the medical, but taxi fares won't be paid unless this has been agreed beforehand with the DWP.

Give very careful consideration to how you travel to the medical, because you will be asked about how you did so and enormous assumptions may be made on the basis of your being able to drive or use public transport on your own, for example. It may be assumed that you can walk to and from bus stops without pain, that you can stand to wait for buses, rise from sitting to standing, handle coins, get up and down steps, sit for long periods and so on

If you do have to use public transport and it is painful or distressing for you, make sure you explain this to the doctor who assesses you.

### ***Having someone with you***

You are allowed to have someone come with you and sit in on your medical assessment. This can be anyone you like: friend, relative, carer, social worker, advice worker, etc. This may be particularly helpful if you are worried that you might be too fatigued or anxious to tell the doctor everything you think they should know. The doctor should give them the opportunity to provide information about you if that is what you want. But just having someone there may help you to feel more confident and to give more detailed information than you would be able to give if you were alone.

You or your accompanying person can also take notes at the medical. The doctor may read out a ‘Legal notice’ if you or your accompanying person are seen taking notes. This notice just tells you that your notes will not be regarded as part of the ‘official’ record of the medical and that you should not publish them elsewhere. However, there is nothing to stop you submitting your notes, or extracts from them, as part of any complaint or appeals procedure.

We always recommend that you take someone with you if you possibly can.

### ***Just say no***

Think about what you will do if the health professional asks you to do something you feel unable to do.

We would suggest that if the health professional asks you to do something that you know will cause you pain or severe discomfort you say that you can't do it and explain why. If,

however, you do something and it hurts, don't suffer in silence. Tell the health professional you are in pain or they are likely to assume you have no problems with that activity.

And don't put on a brave face and tell the doctor 'I manage' when they ask you about daily living activities. If you do that then they will have no choice but to assume you don't score points. It's important that you put aside your normal coping strategies and any desire to avoid appearing to feel sorry for yourself. The health professional can't make an accurate assessment if you don't tell them just how difficult your life is, and how miserable that sometimes makes you, no matter how hard that might be to admit.

### ***Recording your medical***

In the past, the DWP have made it virtually impossible for claimants to record their medical by insisting that they had to bring their own sound engineer and a dual tape-recording device with them.

However, the situation has changed since the beginning of February 2012. If you wish to have a recording of your medical made, so you can be sure that what you believe you said matches what the doctor reports, this should now be done for free for you by Atos.

A dual recording machine is used by Atos to produce two CD recordings of your medical, one of which is given to you at the end of your examination and the other is retained by Atos.

**Warning!** At the time of writing Atos have very few recording machines to cover the whole country, so your WCA is likely to have to be rescheduled and will probably be delayed by several weeks or more whilst a machine is booked and sent to your local centre. However, at the time of writing some claimants say they are being refused a recording of their medical by Atos.

We have written a standard letter to be used when you are given a date for your WCA. You can also make the request verbally if you are telephoned with an appointment, but you should still follow up with a letter. If possible send a copy both to the medical examination centre and to the DWP office dealing with your claim.

*Dear Sir/Ms,*

*Name:*

*National insurance number:*

*WCA medical date:*

*WCA medical venue:*

*Re: having my assessment recorded*

*I wish to have my work capability face-to-face assessment recorded and I understand that this will be done by Atos using dual recording facilities and at no cost to me, as has repeatedly been stated by the minister of state for employment, Chris Grayling. If recording facilities are not available on the date of my assessment, I wish to have it postponed until they are.*

#### *Right to a recording*

*In a debate on the work capability assessment on 1 February 2012, Grayling told MPs that:*

*"On audio recording, we will offer everyone who wants it the opportunity to have their session recorded." (Hansard citation: HC Deb, 1 February 2012, c291WH)  
<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120201/halltext/120201h0001.htm#12020157000270>*

*On 17 July 2012, in reply to a written question by Frank Field MP, Grayling stated that:*

*"As part of this process we are also reviewing Atos capacity to provide recordings for those claimants who currently request one. Additional machines have been ordered. However a large scale purchase of machines in the absence of an evaluation of the process is not effective use of public money. Although there have been increases in requests these still represent only a small percentage of overall work capability assessments.*

*"In the meantime, while Atos will do all that they can to accommodate requests for audio recording there may be times when the service cannot be offered, for example where it has not been possible to get access to recording equipment on the date/time of the WCA. In these circumstances clients will be told in advance that their request cannot be accommodated and offered a later date."*

(Hansard citation: HC Deb, 17 July 2012, c783W)

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120717/text/120717w0007.htm#1207187002668>

#### If recording facilities are not available

*If recording facilities are not available on the date of my face-to-face assessment, I wish to be offered a later date rather than be obliged to attend an assessment which is not recorded, as the minister has said is my right.*

*I understand, however, that on a number of recent occasions Atos staff have claimed that following revised instructions from the DWP they will no longer cancel appointments if it transpires that recording equipment is not available, in spite of a proper request having been made.*

#### Complaint to my MP

*I wish to make it clear that, should you seek to oblige me to attend an assessment without recording facilities I will immediately make a formal complaint to my MP and ask them to urgently ask the minister whether the statement he made to MPs on 12 July was truthful and, if so, why it is not being followed by the DWP and Atos.*

#### Right to written details of conditions

*If you seek to oblige me to attend a face-to-face assessment at which recording facilities are not available I wish to be provided with copies of any instructions or guidance issued by the DWP to Atos as to when they are permitted to decline to meet a request for an assessment to be recorded.*

*In Upper Tribunal Case No. CIB/3117/2008, which concerned a claimant who refused to attend a medical unless he was permitted to record it, the upper tribunal judge held that:*

*"It has not been established that the appellant failed to show 'good cause' for failing to submit himself for a medical examination on 22 October 2007."*

*The tribunal judge went on to instruct that:*

*"The Secretary of State shall ask Medical Services to arrange for the appellant to be provided with details, in writing, of the conditions under which an interview or examination may be tape-recorded;*

*"The Secretary of State shall ask Medical Services to offer the appellant a further appointment for a medical examination."*

*Should these written details not be provided to me I will seek legal advice as to whether I may have good cause to refuse to attend a medical. I shall also seek advice on whether I have grounds to seek compensation should I suffer financial hardship or emotional distress*

*as a result of failure by the DWP or Atos to follow their own proper procedures, legal rulings or ministerial undertakings.*

**Reasonable adjustments**

*In some instances, such as where a claimant has difficulties with concentration caused by physical pain, fatigue or a mental health condition, it may be a reasonable adjustment under the Equality Act 2010 for the claimant to have the assessment recorded because they will be unable to take notes or properly recall what was said at the assessment.*

*Should you refuse to allow me to have my medical recorded I will seek legal advice as to whether I can take action against Atos or the DWP for breach of the Equality Act. As a preliminary to that action I shall seek evidence of whether reasonable adjustments were considered in my case, such as inviting me to use my own recording device or postponing the assessment until a departmental device was available.*

**Appeal hearing**

*Should I be unhappy with the decision in relation to my capacity for work I will appeal the decision and ask the tribunal to make a finding as to whether the failure of the DWP and Atos to follow their own guidelines in relation to recording medicals should be taken into account when assessing the reliability of the Atos medical report.*

*This letter is sent without prejudice as to any other legal remedies I may seek if I am refused the opportunity to have my assessment recorded.*

*Yours faithfully,*

If you wish to give notice before you are asked to attend a WCA, for example by stapling a letter to your ESA50 then start like this instead:

*Dear Sir/Ms,*

*Name:*

*National insurance number:*

*Re: having my assessment recorded*

*If it is decided that I need to attend a face-to-face work capability assessment I hereby give notice that I wish to have the assessment recorded and to be provided with a copy of that recording.*

*I understand that this will be done by Atos using dual recording facilities and at no cost to me . . . etc as above.*

## What happens at your LiMA computer controlled medical

Almost all incapacity medicals are now carried out by an Atos doctor or nurse using computer software called LiMA(Logic integrated Medical Assessment). The health professional is told by a computer screen what to ask you and spends a lot of the assessment answering multiple choice questions by clicking with a mouse.

Once the doctor or nurse has finished answering the questions, the computer generates a report selecting which descriptors it thinks should apply to you and pasting in what it considers to be evidence to support its choices.

The doctor or nurse is supposed to review the report before it is sent electronically to the DWP. It is possible for the doctor to disagree with the computer's report and change it, but they must justify doing so and it's always quicker just to go along with what the computer says. The health professional carrying out your medical is likely to be on piece work: they get paid per medical and the more medicals they carry out the more they earn. So there is a big incentive to get through each medical as quickly as possible.

Below is a screenshot from the 2003 version of the software used by Atos health professionals.

The screenshot shows a Windows-style dialog box titled "Variable Selector -- Web Page Dialog". The title bar includes standard window controls (minimize, maximize, close) and the application name. The main area contains three sections of questions, each with a label and a series of radio buttons for selection:

- Variability**: The first question in this section is "[Variability] [[CanDo]] [[BathroomActivity| themselves.]]". The options are:
  - Always
  - Usually
  - Occasionally
  - Rarely
- CanDo**: The second question in this section is "[CanDo]". The options are:
  - likes to
  - is able to
  - manages to
- BathroomActivity**: The third question in this section is "[BathroomActivity]". The options are:
  - wash
  - shower
  - bath
  - toilet
  - shave
  - clean teeth
  - brush hair
  - wash hair
  - work taps
  - do everything in the bathroom

In the bottom right corner of the dialog box is a "Return" button.

The health professional has to choose one answer from each of the three sets of options. The computer will then construct a sentence such as:

'Always manages to do everything in the bathroom themselves.'

Similarly, in the box on the next page, the doctor will choose options which will allow the computer to create a sentence such as:

'Always manages to dress without help.'

**Variable Selector -- Web Page Dialog**

[[Variability] manages] [[DressingItem] without help.]

---

<b>Variability</b>	<input checked="" type="radio"/> Always <input type="radio"/> Usually <input type="radio"/> Occasionally <input type="radio"/> Rarely
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<b>DressingItem</b>	<input checked="" type="radio"/> to dress <input type="radio"/> shoes and socks <input type="radio"/> trousers <input type="radio"/> tights <input type="radio"/> to dress bottom half <input type="radio"/> to dress top half <input type="radio"/> zips <input type="radio"/> buttons <input type="radio"/> shoelaces <input type="radio"/> bra <input type="radio"/> coat <input type="radio"/> hat
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The computer will then paste these sentence repeatedly throughout the report to justify awarding or not awarding points for descriptors. For example, in relation to reaching the computer may also say that no points should be awarded because the claimant:

'Always manages to do everything in the bathroom.'

'Always manages to dress without help.'

**Variable Selector -- Web Page Dialog**

[[Variability]] [[CannotDo]] [[Housework]] [due to [Problem].]

---

<b>Variability</b>	<input checked="" type="radio"/> Always <input type="radio"/> Usually <input type="radio"/> Occasionally <input type="radio"/> Rarely
--------------------	---

---

<b>CannotDo</b>	<input checked="" type="radio"/> is unable to <input type="radio"/> struggles to
-----------------	--

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<b>Housework</b>	<input checked="" type="radio"/> do housework <input type="radio"/> tidy house <input type="radio"/> vacuum <input type="radio"/> use washing machine <input type="radio"/> hang out washing <input type="radio"/> iron <input type="radio"/> make bed <input type="radio"/> change bed <input type="radio"/> take out rubbish <input type="radio"/> load dishwasher <input type="radio"/> wash dishes <input type="radio"/> clean bathroom <input type="radio"/> clean windows
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<b>Problem</b>	<input checked="" type="radio"/> neck problem <input type="radio"/> upper limb problem <input type="radio"/> back problem <input type="radio"/> lower limb problem <input type="radio"/> pain <input type="radio"/> fatigue <input type="radio"/> breathlessness <input type="radio"/> weakness <input type="radio"/> poor vision <input type="radio"/> poor balance <input type="radio"/> apathy <input type="radio"/> disorganisation <input type="radio"/> confusion
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If the doctor or nurse considered that the claimant had problems with housework then he might use the dialogue box above to allow the computer to create a sentence such as:

'Usually struggles to vacuum due to lower limb problem.'

The computer might then use this as justification for deciding that points should be awarded for:

‘Cannot mobilise more than 200 metres on level ground without stopping or severe discomfort.’

It is possible for the doctor to type in their own evidence rather than using the multiple choice answers. However, if they do so the computer cannot copy and paste these answers into different bits of the report because it doesn’t have any way of understanding what the doctor has written. This means that the doctor will have to do the copying and pasting themselves which obviously takes more time and effort. The doctor may thus be reluctant to choose any option that is not already loaded into the software.

## Questions you are likely to be asked at your medical

Below are a number of questions you are likely to be asked at your medical. Bear in mind that your answers may lead to further questions. For example, if you say that you use a computer you may be asked what you use it for, how often and how long for each time.

Some questions are more likely to be asked if you have a physical health problem. For example: 'How many stairs do you have?' and 'Is the toilet upstairs or downstairs?' Some are more likely to be asked if you have a mental health problem. For example: 'Can you follow a simple recipe?' and 'Are you safe around electricity and gas?'

But most people are likely to be asked the majority of these questions. It's worth looking through them and thinking about how you could most accurately answer them.

### Travelling to the medical

Have you come on your own?  
How did you get here?  
Where do you live?  
How long did it take you to get here?  
Where have you parked? or Where did the bus stop?  
Did you have to walk (from the car park or bus stop)?  
How far was it?

### Your health conditions

What are your main conditions?  
What medication do you take?  
Who do you see about your conditions?  
When did you last see them?  
Have you seen a specialist?  
Any hospital admissions in the last 12 months?

### Accommodation

Do you live in a house or a flat?  
How many stairs do you have?  
Is the toilet upstairs or downstairs?  
Does anyone else live with you?

### Accompanying person

Who is this with you?  
Are you a friend or a relative?  
What is your name?

### Past employment

What was your last job?  
Why did you stop working?  
When did you stop working?  
Would you like to go back to work?

### Sleeping, washing and dressing

What time do you go to bed?  
How do you sleep?  
What time do you wake up?  
Do you have problems getting out of bed or dressing?  
Does anybody help you?  
Do you shower or bathe?

### **Cooking, housework and shopping**

Do you do your own cooking?  
What kind of cooking do you do?  
Can you follow a simple recipe?  
Are you safe around electricity and gas?  
Have you had any accidents recently?  
Do you keep your home tidy?  
Do you do shopping?  
Do you go to the supermarket or the local shop?  
Do you walk or drive to the shops?  
How long do you shop for?  
How often do you go?

### **Hobbies and social life**

What do you do all day?  
Do you have any hobbies or interests?  
Do you watch TV?  
What do you watch?  
Do you use a computer?  
Do you have friends?  
Do you have a social life?  
Do you like to spend time with friends or family?  
Do you go to pubs or night clubs?  
Do you drink alcohol?  
Do you use any street drugs?

### **Pets**

Do you have a pet?  
Do you feed your pet?

### **Communicating**

Do you have a telephone?  
Do you have problems with phone calls or doorbells?  
Do you phone your friends or family?  
Do you deal with your own letters and bills?  
Did you fill in the incapacity questionnaire yourself?

### **Temperament**

How is your temper?  
How is your mood?  
Do you have problems with anxiety or panic attacks?  
Did you get anxious or lose sleep thinking about coming here today?

## How the decision is made and what to do when you get it

### ***How the decision is made***

The decision maker should consider all the evidence available to them, not just the Atos doctor or nurse's report, and reach their own conclusion about how many points you score. This evidence should include:

- your ESA50 incapacity for work questionnaire;
- any medical certificates and other evidence such as an ESA113 from your doctor if they have been requested;
- the ESA85 medical report form from the Atos health professional if you had a medical assessment;
- any additional evidence, such as supporting letters from your GP, consultant, relatives and friends.

In the past, decision makers generally went along with whatever descriptors the Atos health professional chose, disagreeing in only 2% of cases. However, since accepting in 2011 recommendations in the first Harrington report, the DWP should now ensure that decision makers take into account all the available evidence and reach their own conclusions.

### ***Phone calls from the decision maker***

The decision maker may contact you to try to get further information before reaching a decision. However, since November 2011, decision makers are particularly expected to call you if they are intending to find you capable of work, to ensure that they have all the available evidence. So, if you do receive a call from a decision maker, there's a good chance that you are about to be refused ESA.

If you do get one of these calls, you may want to ask the decision maker if they will put their questions in writing, but they may not be willing to do this.

If the call goes ahead, take notes yourself and consider recording it if you are able. You don't need permission to do this if the recording is for your own use. You can also ask the decision maker if the call is being recorded and ask for a copy of the recording if it is. In addition, you can ask for a copy of any notes made by the decision maker in the course of the conversation. All of this may be valuable evidence for your appeal.

If you have listed health professionals in your form from whom you have not been able to get evidence yourself, ask the decision maker if they have contacted them. If not, you may wish to tell the decision maker you will be raising the issue as part of your appeal if they are not contacted.

If your claim is unsuccessful you may receive a further call from the decision maker explaining the decision and your options. Bear in mind that 40% of appeals against a decision that a claimant is capable of work are successful, so lodging an appeal is a very important option. See our appeals guide for more on this.

### ***Delayed assessment***

If by the end of week 13 a decision has not been made on eligibility, for example because you have been too ill to be assessed or because there is an enormous backlog, the assessment phase can be extended. Where this happens, when the decision as to which group you belong to is made, any back payments of an additional component owed from week 14 onwards will be made.

## **If you are found to have limited capability for work**

You will be moved into the work-related activity group in the main phase of ESA not sooner than thirteen weeks after you made your application. Do try to get your benefits checked at least once a year by an advice agency, you may be entitled to additional amounts because of your health condition or the length of time it has lasted.

How long it will be before you are assessed again will depend to a large extent on what prognosis was given by the Atos health professional who examined you or made recommendations to the decision maker based on medical and other evidence.

Atos doctors and nurses tend to be optimistic about the future, often suggesting that significant improvement may have taken place within three or six months. You may therefore, receive another questionnaire to complete less than a year after the decision has been made that you have limited capability for work.

It is vitally important to take as much trouble as possible over every questionnaire you receive. The fact that your condition has not changed, or has even deteriorated, since your last medical will not in any way guarantee that you will once again be found to have limited capability for work.

### **If you think you should be in the support group**

If you were placed in the work related activity group but think you should be in the support group, you can appeal the decision, (see below for more on appeals). You will remain in the work-related activity group whilst your appeal is being dealt with.

**Warning!** You should be aware that if you asked to have your award looked at again, there is always a possibility that it could be taken away rather than improved. If you are concerned that this might be a possibility in your case, then please try to get advice before applying for a supersession.

### **If your condition deteriorates**

If your condition deteriorates, or you develop a new condition, and you consider that you may now be eligible for the support group, you may wish to ask for your award to be looked at again. This is technically called a supersession. If you can obtain supporting medical evidence of your change of circumstances, this will be very helpful. See the warning immediately above for the potential risk involved.

## **If you are found capable of work**

If you don't score enough points and weren't found to be exempt or covered by the exceptional circumstances regulations you will receive a letter informing you that you are no longer entitled to ESA. If this happens, try to get advice from one of the agencies listed in the help section t the end of this guide as there are strict time limits for challenging decisions.

If you are found capable of work you may be eligible for jobseeker's allowance, but you will have to sign on as available for work and actively look for a job.

You can also claim jobseeker's allowance if you decide to appeal against the decision that you don't have limited capability for work, and the fact that you are claiming JSA should not be used against you.

However, if you do appeal you should be able to continue to receive ESA at the assessment phase rate, and so not have to sign on, while you are waiting for your appeal to be heard. If your appeal is successful you will be paid any additional money, such as a work-related activity component, that has been withheld.

Many people have no hesitation about appealing, as they consider that they have no choice but to do so. For other people, the emotional demands of preparing a case and possibly appearing before a tribunal are extremely daunting and they may find it very hard to come to a decision. If you do decide to go ahead, a separate, detailed guide to the appeals process is available from [www.benefitsandwork.co.uk](http://www.benefitsandwork.co.uk).

### ***‘Within one month’ deadline***

The most important thing to be aware of if you wish to challenge a decision that you are capable of work, either by asking for a revision or an appeal, is that you must do so within one month of the date on the letter giving you the decision.

### ***If your condition deteriorates***

If, for example, because of the stress of the appeal process, your health condition flares up you will need to go back to your GP and get a fresh fit note (formerly a sick note) and try to ensure that the GP notes on it that your condition has deteriorated. You will then need to submit this to the DWP and inform them that you wish to have your capability for work reassessed due to a change in your circumstances. This should then trigger a fresh work capability assessment.

## Where to look for help with claims and appeals

### **Voluntary sector agencies:**

Voluntary sector agencies get their money mainly from local and national government and from grant making trusts. They will not charge you for helping with your benefits. Some of them employ benefits specialists and can offer an extremely knowledgeable and professional service and some can pay for medical evidence to support an appeal.

### **Advice agencies:**

These are agencies whose main job is providing advice and information – they should be able to offer help with enquiries about any benefit. Many employ welfare benefits specialists. You can usually find numbers for advice agencies in your local Yellow Pages in one or more of the following sections: disability information and services; information services; social service and welfare organisations; counselling and advice.

#### **Advice Northern Ireland**

To find your local independent advice centre in Northern Ireland, visit [www.adviceni.net](http://www.adviceni.net)

#### **Citizens' Advice Bureaux (CAB)**

There are over 750 bureaux in mainland Britain. Look under Citizens Advice Bureau in your phone book or visit the Citizens Advice website at: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

#### **Citizens Advice Scotland**

To find your nearest bureau, look under Citizens Advice Bureau in your phone book or visit the CAS website at: [www.cas.org.uk](http://www.cas.org.uk)

#### **Community Legal Advice (CLA) helpline and website**

CLA are a government body and their helpline is run by a private sector company. However, many of the agencies funded by CLA are voluntary sector agencies, such as citizens' advice bureaux. If you are eligible for Legal Help, CLA provide free advice on a range of subjects, including welfare benefits, from their helpline on 0845 345 4 345.

You can also get information about your nearest community legal advice funded advice providers by visiting the CLA website at [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

#### **Disability Information Advice Line**

There are over 140 local DIALs, all staffed by disabled people and all offering telephone advice. If you have a local line it should be listed in your telephone directory under DIAL UK.

Alternatively, call the national office on **01302 310 123** or visit their website at [www.dialuk.org.uk](http://www.dialuk.org.uk) where you can find a directory of DIAL offices.

#### **Shelter**

Shelter offers help with benefits, but generally only in relation to housing or if your home is at risk because of your benefits problems. For help call the Shelter helpline on **0808 800 4444** or visit their website at [www.shelter.org.uk](http://www.shelter.org.uk) for details of your nearest Shelter Housing Aid Centre.

#### **Law Centres**

Contact details of your nearest Law Centre, where you may be able to get free advice and representation at appeals, are available from the Law Centres Federation website at [www.lawcentres.org.uk](http://www.lawcentres.org.uk)

#### **Disability and health related organisations**

If you are disabled or have a long-term physical or mental health condition, there is almost certainly an organisation that can offer you support. Some of the larger disability

organisations have helplines where trained staff can help with some benefits queries and some employ a benefits specialist.

In addition, there are often local groups with members who have claimed benefits and are prepared to share their experiences or accompany you to a medical or to a tribunal. Some mental health organisations, such as MIND, have advocacy projects with staff who will accompany you to medicals and hearings.

To find out about any groups dealing with your health condition, visit the websites below.

**Contact a family** [www.cafamily.org.uk](http://www.cafamily.org.uk)

Although this is a site for families with disabled children it also contains a great deal of information that is of value to adults. The conditions index contains information on over 1,000 conditions along with details of support groups.

**NetDoctor** [www.netdoctor.co.uk](http://www.netdoctor.co.uk)

This site features a support groups index with contact details for groups covering a very wide range of conditions..

**UK Self-Help groups** [www.ukselfhelp.info](http://www.ukselfhelp.info)

Details of about 800 self-help groups, including many relating to different health conditions.

**Solicitors**

Be very cautious about engaging the services of a solicitor. Solicitors may charge you for help with benefits claims and will always charge you for representation at a hearing. Before getting a solicitor to do any work for you, always ask them whether you are eligible for free help under the Legal Help scheme. If you are not, you could face a bill running into thousands of pounds for help with a benefits claim.